

Order 178-15/16
Passage: 9-0 on 4.5.2017

Effective 4/15/2017

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING AGREEMENT BETWEEN PORTLAND AND MAINE
DEPARTMENT OF TRANSPORTATION
RE: WASHINGTON AVENUE BETWEEN CONGRESS STREET AND CUMBERLAND
AVENUE**

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for design of traffic improvements to Washington Avenue between Congress Street and Cumberland Avenue, a project previously approved by a three-party agreement now in effect involving the Portland Area Comprehensive Transportation System by Order 51-16/17, is hereby approved in substantially the form attached hereto to include local administration; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.



<i>MaineDOT use only</i>
AMS ID: _____
CSN: _____
TEDOCS #: _____

Agreement for a Locally Administered Federal-aid Project

With the

City of Portland

Regarding

Reconstruction of a portion of Washington Avenue: WIN 22134.00

Agreement Upset Limit: <u>\$175,600</u>	Federal Project Number: <u>2213400</u>
Federal Share: <u>\$131,700 (75%)</u>	Federal Authorization Date: <u>February 15, 2017</u>
Municipal Share: <u>\$43,900 (25%)</u>	City's Vendor ID: <u>VC1000073476</u>
Begin Date: <u>Upon MaineDOT's Signature</u>	City's DUNS® Number: <u>07-174-7802</u>
End Date: <u>December 31, 2021</u>	CFDA #20.205: <u>Highway Planning & Construction</u>

This Agreement for a federal-aid project is entered into by the State of Maine Department of Transportation (“**MaineDOT**,”) with its headquarters at 24 Child Street in Augusta, Maine, and the **City** of Portland (“the **City**,”) with its principal offices located at 390 Congress Street in Portland, Maine, which jointly shall be referred to as the “**Parties**.”

WHEREAS, this Agreement shall apply to reconstruction of a portion of Washington Avenue, beginning at Congress Street and extending 0.06 of a mile to Cumberland Avenue, with signal improvements at the Congress/Cumberland intersection (the “**Project**”); and

WHEREAS, the **Project** was programmed for the **MaineDOT** Work Plan by the Portland Area Comprehensive Transportation System, the metropolitan planning organization for the Portland Urbanized Area, with its offices at 970 Baxter Boulevard in Portland, Maine (“the **MPO**”); and

WHEREAS, the **City** shall deliver the **Project** as a Locally Administered Project, subject to oversight by **MaineDOT** to ensure that all federal and state requirements are met.

NOW, THEREFORE, in consideration of the foregoing statements, the **Parties** agree to the following terms and conditions:

The following attachments are hereby incorporated into this Agreement:

- Federal Funding Accountability and Transparency Act Form (signature required);
- Federal Title VI Assurances (signature required);
- Requirements for operation and maintenance of traffic signals.

ARTICLE 1. ROLES AND RESPONSIBILITIES

1A. **ROLE OF CITY.** The **City** shall assign a full-time employee with appropriate qualifications and current Local Project Administration (“LPA”) certification from **MaineDOT** to manage the **Project** and carry out the **City**’s responsibilities under this Agreement. This Local Project Administrator shall abide by the guidance in the latest edition of **MaineDOT**’s *Local Project Administration Manual & Reference Guide* (“LPA Manual.”) If the certified administrator leaves the employment of the **City** or ceases to oversee the **Project**, the **City** shall stop work and notify the **MaineDOT** Project Manager. **MaineDOT** will determine a course of action.

- ❑ **City** Local Project Administrator: Jeremiah Bartlett, Transportation Systems Engineer
Email Address: jbartlett@portlandmaine.gov
Phone Number: 207-874-8801

1B. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to carry out the State of Maine's responsibilities under this Agreement. This person will have the authority to request design changes to meet applicable laws and design standards; accept and reject invoices; review construction activities to ensure compliance with Agreement documents; and take all other action to ensure proper performance of this Agreement.

- ❑ Project Manager for **MaineDOT**: John Rodrigue, Project Manager I
Email: john.rodrigue@maine.gov
Phone: (207) 592-0428

ARTICLE 2. FINANCIAL PROVISIONS

- 2A. **UPSET LIMIT.** The **MPO** programmed for preliminary engineering and right-of-way a total of **\$175,600** ("Upset Limit.") **Project** costs eligible for federal participation shall not exceed this Upset Limit without written approval from the **MPO** and **MaineDOT**.
- 2B. **MAINEDOT SHARE.** **MaineDOT**, using federal funding programmed by the **MPO**, will share in all **Project** costs eligible for federal participation at the rate of **75%**, up to a maximum contribution at this rate of **\$131,700**.
- 2C. **LOCAL SHARE.** The **City** shall share in all costs eligible for federal participation at the rate of **25%**, or **\$43,900**. Additionally, the **City** shall be fully responsible for expenditures:
1. Exceeding the Upset limit of this Agreement;
 2. Incurred before the date of notice to proceed; and
 3. Deemed ineligible for federal participation.
- 2D. **MAINEDOT COSTS.** Costs that **MaineDOT** incurs for services performed for the **Project** shall be charged to the **Project**. The **City** shall share in these costs at the rate in Article 2C, "Local Share." **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the **City's** share of them from the final invoice payment.
- 2E. **INVOICING.** **MaineDOT** will reimburse the **City** for **Project** costs eligible for federal financial participation at the rate in Article 2B, "MaineDOT Share." The **City** shall submit invoices in the format provided in Communication 4 from the LPA Manual, as follows:
1. Invoices shall be submitted no more than monthly and no less than quarterly.
 2. Each invoice shall document the charges incurred and proof of payment made.
 3. Each invoice shall include a progress report for the service period of the invoice.
 4. Each invoice shall show **MaineDOT's** and the **City's** portions of **Project** costs, including a running total of costs incurred to date.
 5. The **City** must certify that amounts are correct and not claimed previously.
 6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.

- 2F. FINAL COST. If the actual cost of the **Project** is less than the Upset Limit, the final amounts owed will be adjusted based on the percentages in articles 2B and 2C.
- 2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to cancellation of the **Project** and loss of federal participation, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** for the cost of services performed for the **Project**. Additionally, **MaineDOT** will seek to recover from the **City** any invoice payment made for work deemed to have been ineligible for reimbursement under this Agreement.
- 2H. SET-OFF. **MaineDOT** shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the **City** under this Agreement up to any amounts due and owing to the State with regard to this Agreement or any other agreement with **MaineDOT**; any other agreement with any state department or agency, including any agreement for a term commencing prior to the term of this agreement; and any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. **MaineDOT** shall exercise its set-off rights in accordance with standard state practices including, in cases of set-off pursuant to an audit, the finalization of such audit by **MaineDOT**, its representatives, or the State Controller.
- 2I. NON-APPROPRIATION. By law, all financial obligations assigned to **MaineDOT** in this Agreement are subject to budgetary appropriations. The **City** therefore acknowledges and agrees that if **MaineDOT** receives insufficient resources to support this **Project**, if funds otherwise programmed for this **Project** are de-appropriated, or if **MaineDOT** does not receive the legal authority to spend money programmed for this **Project**, **MaineDOT** shall be released from its obligation to make payment under this Agreement.
- 2J. REMAINING FUNDS. **MaineDOT** shall make available to the **MPO** all federal funds remaining in the completed **Project**, once **MaineDOT** has paid the final invoice from the **City**. Additionally, any federal funds returned to **MaineDOT** by the **City** shall be made available to the **MPO** for reprogramming upon closeout of the **Project**.

ARTICLE 3. PROJECT DEVELOPMENT

- 3A. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting reimbursable work or executing any service contract under this Agreement. This notice shall be contingent upon **MaineDOT** receiving authorization for the **Project** from the Federal Highway Administration ("**FHWA**") and executing this Agreement.
- 3B. KICKOFF. The **Parties** shall hold a project kickoff to go over the scope of work, estimated cost, schedule, and legal requirements before design work may begin.
- 3C. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with progress reports at intervals established by **MaineDOT**'s Project Manager.
- 3D. CORRESPONDENCE. The **City** shall correspond with **MaineDOT** using Communication 1 through Communication 20 from the LPA Manual.

3E. CONSULTANT WORK. If the **City** intends to contract for consultant services under this Agreement, the **City** shall use a qualifications-based selection process in compliance with the regulations found in 23 CFR Part 172, "Procurement, Management, and Administration of Engineering and Design Related Services," and the guidance found in Section 2 of the LPA Manual, "Consultant Selection." The **City** agrees that:

1. Using price as a ranking factor in the selection of a consultant will render consultant work on the **Project** ineligible for reimbursement from **MaineDOT**.
2. The **City** shall obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
3. The **City** shall include the provisions of the "Consultant General Conditions" in all contracts and insert Form FHWA-1273 into all contracts.
4. The **City** shall obtain **MaineDOT**'s written approval before modifying a contract. Work performed on a contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
5. The **City** shall evaluate the performance of a consultant upon completion of its contract with the consultant. A copy of the evaluation shall be provided to **MaineDOT**.

3F. DESIGN. The **City**, in coordination with its contracted consultant if applicable, shall be responsible for preparing all design plans, specifications, estimates and contract documents for the **Project**, in accordance with appropriate reference publications that may include, but are not limited to, MaineDOT's Engineering Instructions, Highway Design Guide, Standard Specifications and Standard Details. The design of the **Project** shall comply with the Americans with Disabilities Act (ADA) and all other applicable regulations. Furthermore:

1. The **City** shall submit the following to **MaineDOT** for review and comment: a preliminary design report; design plan impacts; and final plans, specifications and estimate package (PS&E).
2. The **City**, in coordination with its contracted consultant if applicable, shall ensure that the contract book for the **Project** references MaineDOT's *Standard Specifications* and contains the following documents:
 - a. Davis-Bacon prevailing wage rates;
 - b. Form FHWA-1273; and
 - c. Signed Title VI Assurances.
3. **MaineDOT** will enforce all laws, regulations, construction standards and specifications that apply to the **Project** and will require changes if they are not met.
4. **MaineDOT** will give the **City** authorization to advertise for construction once the **City** addresses all comments from **MaineDOT** and **MaineDOT** accepts the final PS&E package as complete. Advertising the **Project** without written authorization from **MaineDOT** shall render the entire **Project** *ineligible* for federal-aid funding.

3G. SURVEY. **MaineDOT** will perform all survey work if the **Project** is located on a state highway. Alternatively, the **City** may hire a surveyor that has been pre-qualified by **MaineDOT**, using an appropriate selection method outlined in the LPA Manual.

- 3H. QUALITY CONTROL. The **City** or its contracted consultant, if applicable, shall be responsible for meeting all engineering standards and regulatory requirements that apply to the **Project**. The receipt of construction authorization from **MaineDOT** shall not relieve the **City** and its consultant, if applicable, of responsibility for meeting all such engineering standards and regulatory requirements.
- 3I. PUBLIC PARTICIPATION. The **City** shall give the public and all abutters the opportunity to learn about and comment on the **Project**, using a public process appropriate for the scope of work and acceptable to MaineDOT's Project Manager. The **City** shall provide **MaineDOT** with a public process certification, in the format provided in Communication 10 from the LPA Manual, as part of the **Project's** environmental package.
- 3J. ENVIRONMENTAL REVIEW. **MaineDOT** will prepare and submit to the FHWA all documentation required under the National Environmental Policy Act ("NEPA"). The **City** shall provide **MaineDOT** with signed Communication 11 from the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.
- 3K. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format of Communication 12 from the LPA Manual, as part of the final PS&E package for the **Project**.
- 3L. UTILITIES. The **City** shall coordinate the **Project** with any affected utility or railroad. The **City** shall provide **MaineDOT** with a utility certification in the format of Communication 13 from the LPA Manual, as part of the final PS&E package. MaineDOT's Utility Accommodation Rules (2014) shall apply to utility relocations.
- 3M. RIGHT OF WAY. The **Parties** will coordinate acquisition of right-of-way as follows:
1. **MaineDOT** will carry out the right-of-way process for sections of the **Project** located on a state highway, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act.")
 2. The **City** shall carry out the right-of-way process for sections of the **Project** located off of the state highway system. In doing so, the **City** shall:
 - a. Follow the Uniform Act and the regulations found in 49 CFR, Part 24.
 - b. Use the federally approved MaineDOT "Right of Way Manual."
 - c. Provide a right-of-way map showing all rights obtained for the **Project**.
 - d. Provide **MaineDOT** with a signed right-of-way certification in the format of Communication 14 from the LPA Manual, as part of the final PS&E package.
 3. The **City** shall dedicate permanently to the **Project** for public use any municipal property needed for the **Project**.
- 3N. ADVERTISE. The **City** shall use competitive bidding to hire a construction contractor upon receiving written authorization to advertise from **MaineDOT**, as follows:
1. The **City** shall follow the procedures in MaineDOT's *Standard Specifications* (November 2014 Edition), Section 102, "Bidding."
 2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain written approval from **MaineDOT** before awarding a contract.

3O. AWARD. Upon receiving written approval from **MaineDOT**, the **City** shall award a contract to the lowest responsive and responsible bidder in accordance with MaineDOT's *Standard Specifications* (November 2014 Edition), Section 103, "Award and Contracting." The **City** shall administer the contract for the duration of the **Project**.

3P. CONSTRUCTION. During construction of the **Project**, the **City** shall:

1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method.
2. Hold a pre-construction meeting with notice of at least 5 working days with representatives of **MaineDOT**, the contractor, utilities and any other parties involved in or affected by the work.
3. Coordinate materials testing necessary to meet the Minimum Testing Requirements that **MaineDOT** established for the **Project**.
4. Submit contract modifications to **MaineDOT** for review and comment before they are executed. **MaineDOT** reserves the right not to reimburse the **City** for work under a contract modification executed without **MaineDOT's** review and approval.
5. If applicable, provide **MaineDOT** with revised as-built plans for the completed **Project**.

3Q. MAINE DOT OVERSIGHT. **MaineDOT** may inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.

3R. MAINTENANCE. The **City** shall operate and maintain the improvements under the terms of Attachment 3, "Requirements for Operation and Maintenance of Traffic Signals."

ARTICLE 4 – RECORDS & AUDIT

4A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **3 years** from the date either of **MaineDOT's** acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this retention period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.

4B. The **City** and any contracted party working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records, at reasonable times. Copies of records shall be furnished at no cost to the federal or state agencies requesting them.

4C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 5. GENERAL PROVISIONS

5A. GOVERNING LAW. The **Parties** agree to comply with all applicable federal, state and local laws, regulations, executive orders and ordinances including, but not limited to, the

provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), "Transportation"; Title 23 in the Code of Federal Regulations (CFR), "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

- 5B. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law.
- 5C. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of 23 M.R.S.A. Section 63, "Confidentiality of Records."
- 5D. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, the **City** agrees as follows:
1. The **City** shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The **City** shall take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The **City** agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
 2. The **City** shall – in all solicitations or advertising for employees placed by or on behalf of the **City** relating to this Agreement – state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
 3. The **City** shall cause the foregoing provisions to be inserted in any contract for any work covered by this Agreement so that such provisions shall be binding upon each contractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- 5E. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of **MaineDOT**.
- 5F. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
- 5G. BINDING EFFECT. The **Parties** shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.

5H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

- 6A. No person or entity with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.
- 6B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for the **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and on behalf of the **City**.
- 6C. No person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 7. DEBARMENT

- 7A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal department or agency.
- 7B. If the **City** contracts with any third party pursuant to this Agreement, the **City** shall require that party and its principals to certify that they:
1. Have not within a 3-year period preceding the date of such contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with the following: a.) obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; b.) violating federal or state antitrust statutes; and c.) committing

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

2. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1 of this section; and
3. Have not within a 3-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

7C. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

ARTICLE 8 – TERMINATION

8A. **DEFAULT.** **MaineDOT** shall send the **City** a written Notice of Default, in accordance with Article 8B, if the **City**:

1. Withdraws its support for the **Project**, resulting in cancellation of the **Project**;
2. Fails to advertise the **Project** within 3 years of the execution date of this Agreement;
3. Takes any action that renders the **Project** ineligible for federal-aid funding;
4. Uses **Project** funds for a purpose not authorized by this Agreement;
5. Misrepresents or falsifies any claim for reimbursement;
6. Fails to meet the standards of performance outlined in this Agreement.

8B. **FOR CAUSE.** **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 8A. **MaineDOT** will afford the **City** a cure period of 14 calendar days, effective on the **City**'s receipt of Notice of Default. If the **City** fails to address all defaults within this cure period or such longer period as **MaineDOT** may authorize, **MaineDOT** may terminate this Agreement for cause, with these conditions:

1. **MaineDOT** will recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**, in accordance with Article 2G, "Repayment."
2. **MaineDOT** will make available to the **MPO** all federal funds remaining in the terminated **Project**, as well as all federal funds recovered from the **City**, in accordance with Article 2J, "Remaining Funds."

8C. **FOR CONVENIENCE.** The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

1. **MaineDOT** will reimburse the **City** for eligible work performed until the effective date of termination for convenience. The **City**'s share of **MaineDOT**'s costs for work on the **Project** shall be deducted from the final invoice amount owed to the **City**.
2. **MaineDOT** will make available to the **MPO** all federal funds remaining in the **Project**, in accordance with Article 2J, "Remaining Funds."

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT**'s payment of the final invoice from the **City** for the **Project** or **December 31, 2021**, whichever occurs first, except as follows:

1. Article 3R, "Maintenance," shall be enforced as set forth in Attachment 3 to this Agreement.
2. Article 4, "Records & Audit," shall remain in effect until all activity pursuant to this provision is completed.
3. Article 5B, "Indemnification," shall remain in effect until terminated by the **Parties** or negated by law.
4. Article 5C, "Confidentiality," shall remain in effect until negated by law.

ARTICLE 10. AGREEMENT APPROVAL

The undersigned municipal representative assures that the **City**'s legislative body has approved the **City**'s entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

IN **WITNESS WHEREOF**, the **Parties** have executed this Agreement effective on the date last signed below.

City of Portland

Maine Department of Transportation

By: _____
Jon Jennings, City Manager

By: _____
William A. Pulver, P.E., Director,
Bureau of Project Development

Date: _____

Date: _____

I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my control.

Federal Funding Accountability and Transparency Act

The **City of Portland** and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

If the Federal portion of the **Project** exceeds \$25,000, an authorized representative from the **City** shall sign this document under (B) below and return it with the **Project** Agreement. Additionally, the **City** shall provide the following information, if applicable:

A) The total compensation and names of the top five officers if:

- More than 80% of the **City**'s annual gross revenues are from the U.S. Federal Government; and
- Those revenues are greater than \$25 million annually; and
- Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

B) Legal name and DUNS[®] number on file with the Central Contractor Registration (CCR):

City of Portland, Maine

07-174-7802

Sign and Print Legal CCR Name

DUNS[®] Number

Authorized Representative: _____

Jon Jennings, City Manager

U.S. Department of Transportation (U.S. DOT)

Federal Highway Administration – Standard Title VI / Nondiscrimination Assurances

DOT Order No. 1050.2A

The **City of Portland** (the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (U.S. DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The **City of Portland**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or Agreement subject to the Acts and the Regulations.

4. If applicable, the Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. If applicable, the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in it programs. The person signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

DATED _____

By _____
Jon Jennings, City Manager
City of Portland

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 et seq.).

OPERATION & MAINTANCE OF TRAFFIC SIGNALS

- A. The **City of Portland** (“**City**”) agrees to operate and maintain all traffic signals and related equipment installed pursuant to this Agreement to function as designed and installed as part of the above-referenced Locally Administered Project, unless approved otherwise as hereinafter provided or as necessary as follows:
1. All malfunctions and deficiencies in the traffic signal or any equipment appurtenant thereto shall be repaired or corrected expeditiously in accordance with the Institute of Transportation Engineer’s (ITE) “Traffic Signal Installation and Maintenance Manual.” Any failure to correct the traffic **signal to function as designed could, upon written notification from the MaineDOT**, result in the **MaineDOT** making all necessary repairs at the **City’s** expense.
 2. The visibility of the traffic signal shall be preserved and maintained at all times by removing any visual impairment thereto.
 3. No change in operation or modification to the traffic signal or any equipment appurtenant thereto shall be made without the express written approval of the **MaineDOT**.
 4. The **MaineDOT** shall be notified in writing prior to any removal or replacement of the traffic signal or any equipment and appurtenant thereto. Upon removal, such traffic signal or equipment so removed shall be disposed of as deemed appropriate by mutual agreement of the MaineDOT and City without any cost to the **MaineDOT**, unless agreed otherwise in writing.
- B. The **City** agrees to be responsible for the electrical service for the traffic signals and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for the installation of such service.
- C. The **City** agrees to maintain all pavement markings (including stop bars, lane use arrows and all striping necessary to delineate the turning lane) and all traffic control signs as furnished under the project.
- D. The **City** agrees to allow the contractor for the project to control all traffic within all designated work areas at such times and in such a manner necessary to permit construction of the project and the installation of the traffic signal as specified in the traffic control plan approved by the **MaineDOT**.