

Order 15-17/18

Motion to postpone to August 21, 2017: 9-0 on 7/24/2017

Motion to postpone to September 18, 2017: 8-0 (Ray absent) on 8/21/2017

Motion to postpone to October 16, 2017: 9-0 on 9/18/2017

Passage: 8-0 (Strimling absent) on 10/16/2017

Effective 10/26/2017

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, PORTLAND AREA
COMPREHENSIVE TRANSPORTATION SYSTEM
AND MAINE DEPARTMENT OF TRANSPORTATION
RE: BRIGHTON-DEERING-FALMOUTH INTERSECTION ROUNDABOUT**

ORDERED, that the three-party agreement between the Maine Department of Transportation (MDOT), the Portland Area Comprehensive Transportation System and the City of Portland, for the design and construction of the Brighton-Deering-Falmouth-Street Intersection Roundabout, with the MDOT identification number of 018624.00, is hereby approved in substantially the form attached hereto; 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>	
TEDOCS #:	_____
CT #:	_____
CSN #:	_____
PROGRAM:	<u>Bureau of Planning</u>

State of Maine
DEPARTMENT OF TRANSPORTATION
COOPERATIVE AGREEMENT

Portland, Maine
Brighton-Deering-Falmouth Intersection Project

<i>MaineDOT Use Only</i>	
WIN: 018624.00	Agreement Maximum Amount: \$2,868,809.00
PACTS Vendor Number:	Agreement Begin Date: (office Use Only)
Municipal Vendor Number:	Agreement End Date:

This Cooperative Agreement ("Agreement") is entered into by and between the Maine Department of Transportation ("MaineDOT"), an agency of state government with its principal administrative offices located at Child Street, Augusta, Maine, the Portland Area Comprehensive Transportation System ("PACTS") located at 970 Baxter Boulevard, Portland Maine, and the City of Portland ("Municipality"), a municipality in the State of Maine with offices located at 389 Congress Street, Portland, Maine, hereinafter referred to as the ("Parties.")

RECITALS

- A. The work that is the subject of this Agreement is the design and construction of a traffic roundabout to be located at the intersection of Brighton Avenue, Deering Avenue and Falmouth Street in Portland, Maine (the "Project") described in **Attachment A** and depicted on **Attachment B**, both of which are attached hereto and made a part hereof.
- B. MaineDOT, through its partnership with Maine's Metropolitan Planning Organizations ("MPOs"), is charged with managing and dispersing state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT's MPO partner for the Portland Urbanized Area.
- C. PACTS, with the Municipality's support, has programmed the Project for inclusion in the CY2015-2016-2017 MaineDOT Work Plan, using federal capital improvement funding allocated by MaineDOT
- D. The Municipality, unless otherwise specified in this Agreement, will be responsible for executing all phases of the Project as a locally administered project ("LAP").

- E. The Municipality and PACTS will share in Project costs in accordance with the Financial Provisions section of this Agreement, with PACTS' share being an allocation of federal MPO funds disbursed to the Municipality by MaineDOT on PACTS' behalf.
- F. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- G. This Agreement is intended to cover the roles and responsibilities of the Parties during all phases of Project development through construction, and to establish the financial obligations of each Party, including that of full Project development through construction.
- H. Upon completion of the Project's plans, specifications and estimate ("PS&E"), the Parties will assess when the Project will advance to full Project construction, and this Agreement will be modified to reflect updated Project costs. MaineDOT and the Municipality will then enter into a separate Locally Administered Federal-Aid Project Agreement (the "LAP Agreement") to establish responsibilities of MaineDOT and the Municipality through the advertisement, award, construction and construction engineering phases of the Project.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

The following attachments are hereby incorporated into this Agreement:

- Attachment A - Scope of Work
- Attachment B - Concept Design
- Attachment C - Disposition of Impacted University of Maine System Properties

1. Project Cost Sharing and Payment Schedule:

- a. **Financial Obligations:** The total estimated cost of the Project through all phases is \$2,868,809.00 (the "Project Estimate"), as further set out in the table below. The Parties agree to share in all costs associated with all phases of the Project through construction (the "Total Project Costs") in accordance with the allocations outlined below (the "Party Shares") unless otherwise set out in this Agreement or negotiated by mutual agreement of the Parties.
 - i. **Federal Share** (provided through PACTS Federal Allocation) - 75% of federally participating costs, up to a maximum of \$2,151,606.75.
 - ii. **Municipal Share** (provided through the Municipality's obligation of funds) - 25% of federally participating costs, which is estimated at \$717,202.25, plus 100% of the following costs exceeding the Project Estimate:

- a. All Project costs exceeding the Project Estimate, unless otherwise agreed to in writing by the Parties through a written modification to this Agreement;
- b. Any costs deemed ineligible for federal participation;
- c. All costs incurred by the Municipality associated with acquiring and furnishing any additional Right of Way necessary to construct and maintain the Project;
- d. All Project costs associated with mitigation activities made necessary by Section 106 of the National Historic Preservation Act (“NHPA”);
- e. All costs associated with combined sewer overflow (“CSO”) activities, Bedford Street sewer replacement, and rain gardens for storm water treatment within the limits of the Project.

Work Phase	Maximum Estimated MPO Share (Federal and State)		Estimated Municipal Share		Estimated Total Cost
	%	\$	%	\$	\$
Preliminary Engineering	75%	\$ 11,250.00	25%	\$ 3,750.00	\$ 15,000.00
Right of Way	75%	\$ 90,000.00	25%	\$ 30,000.00	\$ 120,000.00
Construction	75%	\$ 1,893,408.00	25%	\$ 631,136.00	\$ 2,524,544.00
Construction Engineering	75%	\$ 156,948.75	25%	\$ 52,316.25	\$ 209,265.00
Total Project Shares		\$ 2,151,606.75		\$ 717,202.25	\$ 2,868,809.00

- b. **Updated Total Project Costs:** When the Project proceeds to full development and construction, the Parties will enter into a modification of this Agreement to reflect the updated Total Project Costs (the “Modification”) in accordance with the terms further set out herein.
 - i. If the Total Project Costs exceed the Project Estimate the Municipality will consult with PACTS and MaineDOT before such adjustments are approved and implemented. Any approved adjustments will be in writing.
 - ii. If the Total Project costs are less than the Project Estimate, the amounts owed by each Party will be adjusted according to the share percentages set out above.
- c. **MaineDOT Costs:** Costs that MaineDOT incurs for right of way acquisition activities and other services performed for the Project (the “MaineDOT Costs”) shall be charged to the Project and applied against the Federal Share and the Municipal Share at the rates set out above. MaineDOT will reconcile these costs upon completion of the Project and resolution of all acquisition claims, and deduct the Municipality’s share of the MaineDOT Costs from MaineDOT’s final disbursement to the Municipality of PACTS’ MPO funds.

- d. **Payment Schedule:** Invoicing and payment schedules will be established in the LAP Agreement that MaineDOT and the Municipality will enter into in accordance with the terms of this Agreement.

2. **Project Milestones:** The Municipality agrees to share information about the Project with MaineDOT and PACTS at the following milestones:

- Project kickoff/initial team meeting/formal public contact;
- Horizontal/Vertical Alignment Complete (HVAC);
- Preliminary public meeting;
- Preliminary Design Report (PDR) complete;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- Peer reviews as may be needed pending unforeseen design changes;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or engineer's estimate of costs.

3. **Project Design, Construction Plans and Specifications:**

- a. **MaineDOT services provided to Municipality:** In support of the Municipality's implementation and oversight of the Project, MaineDOT agrees to provide the following services:

- i. Assignment of a Project Manager to carry out MaineDOT's responsibilities under this Agreement. The MaineDOT Project Manager or a designee will have the authority to request design changes to meet applicable laws and design standards; accept or reject any invoice; review construction activities to ensure compliance with contract documents; and take all other actions necessary to ensure that work performed on the Project is conducted in accordance with the terms of this Agreement.
- ii. Provision of technical assistance to the Municipality in the preparation of the PDR, design plan impacts, and final PS&E for the Project, which shall require MaineDOT's review and approval prior to advertisement or construction of the Project.
- iii. Identification of the Project's environmental impacts with regard to the following: Section 106 of the National Historic Preservation Act (NHPA); Section 4(f) of the US Department of Transportation (DOT) Act; Section 7 of the Endangered Species Act; and applicable environmental regulations related to hazardous materials; and preparation of the appropriate level of environmental documentation and necessary supporting technical studies/reports to satisfy the requirements of the National Environmental Protection Act (NEPA).
- iv. Performance of pavement design using the mechanistic-empirical procedure.

- v. Oversight of all peer reviews in accordance with MaineDOT's requirements.

b. Preliminary Project Development:

- i. The Municipality shall assign a full-time municipal employee with appropriate qualifications and current Local Project Administration ("LPA") certification from MaineDOT to manage the Project and carry out the Municipality'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.**")
- ii. Except as otherwise set out in this Agreement, the Municipality shall prepare, or cause to be prepared, all design exceptions, specifications, estimates and contract documents for the Project in accordance with the appropriate reference publications, including but not limited to MaineDOT's *Engineering Instructions, Highway Design Guide, Standard Specifications* and *Standard Details*, as well as the federal *Manual on Uniform Traffic Control Devices for Streets and Highways* entirely at its cost. The design of the Project shall comply with the Americans with Disabilities Act ("**ADA**".) (the "Project Development Materials").
- iii. As a component of preparing the Project Development Materials, the Municipality shall also:
 - 1. Identify all utilities impacted by the development of the Project and coordinate any necessary relocation activities associated therewith in accordance with MaineDOT's *Utility Accommodations Policy*.
 - 2. Perform all necessary permitting and licensing activities required in connection with the Project.
 - 3. Be responsible for implementing any required mitigation activities identified during the environmental review process and analysis.
 - 4. Work with MaineDOT to determine an acceptable pavement design for the Project that meets or exceeds the Municipality's standard detail for arterial streets.
 - 5. Develop and submit a traffic management plan for MaineDOT approval prior to construction which conforms to the latest edition of the Federal Highway Administration's *Manual of Uniform Traffic Control Devices for Streets and Highways*.

c. Right of Way Acquisition Activities:

- i. USM Property. Project implementation will require the Municipality's acquisition of certain property rights currently held by the University of Maine System (the "USM Property"), as further outlined in the Memorandum of Understanding attached hereto as **Attachment C** and made a part hereof. The Municipality is in the process of negotiating a final and binding agreement with the University of Maine regarding the conveyance of the USM Property (the "USM Agreement") to the Municipality, the approval, and execution of which are mandatory conditions to the Project moving forward and the execution of this Agreement. The Municipality will perform, or cause to be performed, all necessary right-of-way mapping, title examination, appraisal, appraisal review, negotiation and acquisition activities related to its acquisition of the USM property. Right of Way maps developed by or on behalf of the Municipality shall be provided to MaineDOT in a MicroStation-compatible format. The Right of Way maps must be reviewed and approved by MaineDOT, and shall meet the specifications of MaineDOT's *Right of Way Manual* and show all rights obtained for the Project.

- ii. MaineDOT will perform, or cause to be performed, all right-of-way related title examination, appraisal, appraisal review, negotiation and acquisition/condemnation activities for any property rights that must be acquired to accommodate the Project, other than those involving the USM Property. The Municipality will perform, or cause to be performed, all necessary mapping services reflecting such property acquisitions. MaineDOT shall not initiate any negotiation activities with affected property owners until the following milestones have been reached: 1) the USM Agreement has been approved by the Municipality's City Council and the University of Southern Maine's Board of Trustees and executed by an authorized official of each party; 2) all associated periods of due diligence set out in the USM Agreement have passed; 3) all conditions precedent to closing have been resolved to the satisfaction of the Municipality and USM in accordance with the terms of the USM Agreement, clearing the way for a closing to occur; and 4) a formal closing date for conveyance of the USM Property has been jointly agreed upon by the Municipality and USM. These conditions are intended to ensure that Project negotiations are not initiated until the Municipality's ability to secure ownership of the USM Property has been made certain. MaineDOT will make its best efforts to meet the Municipality's preferred schedule of advertising the Project for construction within twelve months of the initiation of negotiations.

- iii. The Municipality shall coordinate with all abutters and others holding vested interests in the Project, and shall designate a representative to accompany MaineDOT during MaineDOT's negotiations with affected property owners to explain Project design and impacts.

- iv. Upon completion of Project construction and prior to final Project close-out, the Municipality shall convey to MaineDOT for permanent public use any municipal property needed to accommodate the Project, including all rights acquired from the University of Maine System for that purpose.
 - v. The Municipality shall certify to the Federal Highway Administration that all necessary title interests have been secured prior to the Project being advertised for construction.
 - vi. The Parties acknowledge that final Project costs associated with right of way acquisition activities shall not be finalized until Project construction is complete and all acquisitions have been settled or resolved through appropriate appeal channels.
- d. **Contract Administration:** The Municipality shall be the sole administrator of the Project contract(s). The Municipality will pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified in the **Project Cost Sharing and Payment Schedule** set out herein. No Party to this Agreement, nor its contractors, will be required to pay for inspections and permits from the Municipality.
- e. **Modification of Project Costs and Subsequent Construction Implementation:**
- i. After the final PS&E package is prepared, the Parties shall enter into the Modification of this Agreement based on updated Project cost estimates.
 - ii. MaineDOT and the Municipality will then execute an LAP Agreement covering their obligations regarding Project advertisement, award, construction and construction engineering. Said LAP Agreement will incorporate financial obligations that are consistent with those reflected in the Modification, unless such terms are otherwise negotiated by mutual agreement of the Parties.
 - iii. The LAP Agreement shall also require that the Municipality furnish all construction engineering services for the Project with Municipal forces or with a consultant approved by MaineDOT.
4. **Public Involvement:** The Municipality shall be responsible for implementing and leading any and all required public involvement activities and any necessary media coordination associated with the any phases of the Project covered by this Agreement. Upon request of the Municipality, the Parties agree to participate as partners in all such actions, and to publicly support the Project at all public involvement activities associated with this Project. The Municipality shall provide a court reporter to document all public meetings.

5. Changes to Project Scope:

- a. The Municipality will consult with PACTS and MaineDOT before implementing any adjustments to the Project scope, and PACTS and MaineDOT will, likewise, notify the Municipality of any proposed changes they wish to implement.
- b. The Municipality, at its election, may cause changes to be made or work added to the Project during final design or construction that benefit the Municipality, provided that the Municipality shall pay one hundred percent (100%) of any additional administrative, design and construction costs associated therewith. All such changes shall conform to MaineDOT's standard design specifications.
- c. MaineDOT may request that changes be made or work added to the Project during final design or construction that benefit MaineDOT, provided that MaineDOT shall pay one hundred percent (100%) of any additional administrative, design and construction costs associated therewith.

6. Termination:

- a. The Municipality reserves the right to terminate the Project for any reason prior to MaineDOT's initiation of negotiations for the anticipated acquisitions of property rights. If the Municipality's termination under this clause is not directed by MaineDOT and PACTS, the Municipality shall be responsible for reimbursing MaineDOT and PACTS fully for any and all Project costs incurred in reliance on the Municipality's commitment documented in this Agreement. All federal funds returned to MaineDOT by the Municipality, as well as all federal funds remaining in the Project, shall be made available to PACTS for reprogramming once the Project is closed out.
- b. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and PACTS and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to the satisfaction of MaineDOT.
- c. This Agreement may be terminated at any time by mutual written agreement of all Parties.
- d. In no event shall any such action taken under this section 6 be deemed a breach of contract, nor shall it represent any individual Party's waiver of claims for breach of contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.
- e. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations incurred by each Party as of the effective date of such termination in accordance with the terms set out in this Agreement, as

well as those provisions to this Agreement that by their very nature are intended to survive.

- f. With the exception of the provisions so noted, all provisions of this Agreement shall expire upon: 1) the Parties' payment of all Party shares due to the Municipality upon completion of the Project and final disposition of quantities or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later; or 2) until terminated under provisions of this Termination section; or 3) until superseded by a new agreement.

7. Miscellaneous Provisions:

- a. Amendments and Modifications. This Agreement, and all attachments, may only be modified or amended in writing and signed by duly authorized representatives of the Parties.
- b. Indemnification. To the extent permitted by law, the Municipality and PACTS shall each individually indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from the indemnifying Party's own negligent or wrongful acts, errors or omissions or by that Party's officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive the termination or expiration of the Project.
- c. Obligation of State Funds. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and the federal government and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- d. Municipal Authority and Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs outlined herein.
- e. State of Maine's Rights of 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 of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to

Email: _____

FACTS:

FACTS

Attn.: _____

Phone: _____

Email: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.

Date _____
John Duncan, Director *
Portland Area Comprehensive Transportation System
Duly authorized

Date _____
Jon P. Jennings, City Manager *
City of Portland
Duly authorized

Date _____
Herb Thomson, Director, Bureau of Planning *
Maine Department of Transportation
Duly authorized

** I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.*

ATTACHMENT A

Scope of Work

The proposed scope of work is to:

- Widen and adjust the intersection of Brighton Avenue with Deering Avenue and Falmouth Street to facilitate the construction of a single-lane roundabout.
- Reconstruct and realign the approaches to this intersection as necessary to satisfy design requirements for entering geometry and truck movements.
- Abandon the segment of Brighton Avenue between Falmouth Street and Bedford Street, thus resulting in a roundabout design with five approaches, as opposed to six.
- Convert Bedford Street between Deering Avenue and the to-be-abandoned segment of Brighton Avenue to two-way vehicular flow.
- Adjust the geometry of Bedford Street and Deering Avenue to facilitate truck movements. The Bedford Street approach will allow for right turns only.
- Provide high-quality pedestrian facilities throughout, including grading adjustments to enhance crossings at the proposed roundabout.
- Provide street lighting, landscaping, and other amenities to enhance existing park space as well as to provide a gateway treatment for this portion of the City of Portland.
- Provide supporting infrastructure for METRO activities.

ATTACHMENT B

Concept Design



ATTACHMENT C

Disposition of Impacted University of Maine System Properties

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF PORTLAND AND
THE UNIVERSITY OF MAINE SYSTEM**

This Memorandum of Understanding (“MOU”) is made this 19 day of January, 2017 between the City of Portland, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (“City”), and the University of Maine System, acting through the University of Southern Maine, with a mailing address of Real Property Contract Administration, 37 University Drive, Robinson Hall, Augusta, Maine 04330 (“University”).

Whereas, by Order 26-13/14 dated August 5, 2013, the City approved the Brighton-Deering-Falmouth Intersection Study as a Master Plan in substantially the form included in a certain August 2013 Final Report prepared by Vanasse Hangen Brustlin, Inc. (the “Report”); and

Whereas, as described in the Report, the City desires to construct, operate, and maintain a proposed roundabout at the intersection of Brighton Avenue/Deering Avenue/Falmouth Street, (the “Project”) as generally depicted in the diagram attached hereto as Exhibit A (the “Plan”); and

Whereas, the Project will impact a portion of Bedford Park, a triangular parcel of land bordered by Brighton Avenue, Deering Avenue, and Bedford Street, which is a dedicated City park, but is not in the City’s Land Bank; and

Whereas, the City’s deed to Bedford Park, recorded in the Cumberland County Registry of Deeds in Book 1290, Page 35, permits using the Park for the purposes of widening the adjacent streets; and

Whereas, on July 1, 2015, the City’s Parks Commission approved the use of a portion of Bedford Park for street widening as required by the Project; and

Whereas, the Project will also impact portions of several parcels of land owned by the University, which the University must convey to the City to complete the Project; and

Whereas, in exchange for such conveyances, City and University staff desire that the parties enter into Agreements addressing the matters set forth below; and

Whereas, City and University staff both desire to proceed expeditiously with the matters set forth in this MOU in order to achieve a timely and successful outcome of the Project.

NOW THEREFORE, provided that the City proceeds with the Project, City and University staff intend to pursue final binding agreements addressing the following matters:

1. The University will convey to the City for the sum of one dollar approximately 3,694 square feet of land that it owns at 246 Deering Avenue, which is located at the area marked 5 on the Plan.
2. The University will convey to the City for the sum of one dollar approximately 884 square feet of land that it owns at the southeast corner of the intersection of Brighton Avenue, Falmouth Street, and Deering Avenue, which is located at the area marked 6 on the Plan.
3. The University will cede its use of a 9,500 square foot parking lot adjacent to Brighton Avenue (marked 13 on the Plan) (the "Brighton Avenue Parking Lot"), resulting in the elimination of 26 parking spaces. The Brighton Avenue Parking Lot will be graded, loamed, and seeded as part of the Project at no cost to the University. Title to this property will remain the University's.
4. Subject to applicable zoning and land use regulations and any other applicable laws, rules and regulations, the City will support the University in its efforts to locate parking spaces to replace the Brighton Avenue Parking Lot on other parcels within the University campus. All costs associated with replacing the Brighton Avenue Parking Lot will be borne by the University.
5. In connection with the Project, City staff intend to pursue the discontinuance of the crosshatched portion of Brighton Avenue between Falmouth Street and Bedford Street marked 10 on the Plan (the "Brighton Avenue Land"). If the City does so, the University will waive its right to any damages resulting from the discontinuance. Unless the City desires to maintain a utility or public easement over the Brighton Avenue Land, the City will release its interest in that land to the University. City and University staff acknowledge that it is the intention of both parties for the University ultimately to be the sole owner the discontinued portion of Brighton Avenue to the extent provided by law and subject to any easements retained by the City as described above.
6. Subject to applicable zoning and land use regulations and any other applicable laws, rules and regulations, the University and the City will work cooperatively to create signage and landscaping for the Project.
7. While the streets are open during construction of the Project, the City will allow the University, at the University's sole expense, to update and replace various utility lines connecting the University's Law School with the core of the University Campus, provided that such work does not delay the Project schedule.
8. In the event that the University decides to demolish its buildings at 222 and 228 Deering Avenue during the Project and desires to have the demolition conducted by the Project contractor, the City will work cooperatively with the University, provided that doing so is consistent with all Project contract documents and does not delay the

Project schedule, and provided that the Project contractor and the University desire to enter into a separate contract for such work.

9. The University and the City will work cooperatively on the Project's construction schedule in order to minimize scheduling conflicts during major University and City events.
10. This MOU is not intended to and does not create any contractual rights or a joint venture between the parties. The Parties acknowledge and agree that the terms of this MOU are not binding upon the parties unless and until they are set forth in greater detail in a future agreement or agreements and approved by the City Council of the City of Portland and the Board of Trustees of the University.
11. Either party may terminate this MOU with or without cause and without liability to the other party by providing written notice of such termination to the other party. Such termination shall be effective upon receipt of such notice by the other party.

City of Portland

Witness: Sonia Bran

By: Jon Jennings
Jon Jennings, City Manager

University of Maine System

Witness: David H. [Signature]

By: M.F. Chip Gavin
M.F. Chip Gavin, Chief Facilities
Management and General Services Officer

Approved as to form:

[Signature]
Corporation Counsel's Office

Brighton-Deering-Falmouth & Bedford-Deering Roundabouts

City of Portland
350 Congress Street
Portland, Maine

Scale: 1" = 30'

Preliminary Right of Way Plan

C	City Utility/MDT Review	11-12-19
D	City Utility/MDT Review	2-22-20
E	City Utility/MDT Review	3-16-20
F	City Review	5-1-20
G	City Review	6-7-20
H	City Review	7-14-20
I	City Review	8-18-20

Drawn by: JSM
Checked by: TJK
Approved by: JSM

Project No: 1-11-00013

Sheet No: **4**

