

Order 92-19/20

Motion to amend to add MaineDOT Agreement for Woodford's Corner ADA Upgrades: 9-0 on 12/16/2019

Passage as amended, as an Emergency: 9-0 on 12/16/2019

Effective 12/16/2019

KATE SNYDER (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
TAE Y. CHONG (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE COOPERATIVE AGREEMENT BETWEEN PORTLAND  
AND THE MAINE DEPARTMENT OF TRANSPORTATION  
RE: BRIGHTON-DEERING-FALMOUTH INTERSECTION PROJECT**

**ORDERED**, that the Cooperative Agreement between the Maine Department of Transportation and the City of Portland for the roundabout to be located at the intersection of Brighton Avenue, Deering Avenue and Falmouth Street with State Work Identification Number 018624.00 is hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED**, that the Agreement for a State Funded Locally Administered Project between the Maine Department of Transportation and the City of Portland for Americans with Disabilities Act Upgrades at Woodford's Corner with State Work Identification Number 020543.20 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; and

**BE IT FURTHER ORDERED**, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and allow the project to go out to bid.



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

**MAINE DEPARTMENT OF TRANSPORTATION**  
**Agreement for a Federal-aid Locally Administered Project**

With the  
**City of Portland**

Regarding  
**Construction of a Roundabout at Brighton/Deering/Falmouth Intersection**

(Payable)

<i>MaineDOT Use Only</i>	
Agreement Amount: <u>\$3,272,236.00</u>	Federal Authorization Date: <u>08/30/2018</u>
Federal Share: <u>\$2,454,177.00 (75%)</u>	Federal Project #: <u>1862400</u>
State Share: <u>\$0.00</u>	MaineDOT WIN: <u>018624.00</u>
Local Share: <u>\$818,059.00 (25%)</u>	Municipality's Vendor ID: <u>VC1000073476</u>
Agreement Begin Date: <u>09/04/2018</u>	Municipality's DUNS #: <u>07-174-7802</u>
Agreement End Date: <u>12/31/2022</u>	CFDA #: <u>20.205 Highway Planning and Construction</u>

This Agreement for a federal-aid locally administered project is entered into by the State of Maine Department of Transportation (**MaineDOT**) with its headquarters at 16 Child Street in Augusta, Maine, and the City of Portland (the **Municipality**) with its principal offices at 389 Congress Street in Portland, Maine, which jointly shall be referred to as the "**Parties**."

**RECITALS**

1. This Agreement shall apply to the development of a roundabout at the intersection of Brighton Avenue, Deering Avenue, and Falmouth Street (the **Project**); and
2. 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 administrative offices at 970 Baxter Boulevard in Portland, Maine (the **MPO**); and
3. The Project also is governed by a Cooperative Agreement involving MaineDOT, the MPO and the Municipality that was executed on September 4, 2018, which shall be the effective date of this Agreement (reference CSN 39539 and CSN 39540); and
4. The Municipality, as a sub-recipient of federal funding, shall administer the Project subject to MaineDOT oversight to ensure that the Municipality fulfills all federal requirements.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing statements, the Parties agree to the following:

**APPENDICES**

- Federal Funding Accountability and Transparency Act Form (signature required);
- Federal Title VI Assurances (signature required); and
- Cooperative Agreement dated September 4, 2018

## ROLES AND RESPONSIBILITIES

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1. **ROLE OF MUNICIPALITY.** The Municipality shall assign a full-time employee with appropriate qualifications and Local Project Administration (LPA) certification from MaineDOT to manage the Project and carry out the Municipality’s responsibilities. This Local Project Administrator shall abide by the latest edition of MaineDOT’s Local Project Administration Manual & Resource Guide (LPA Manual). If the certified administrator leaves or ceases to oversee the Project, the Municipality shall stop work and notify the MaineDOT Project Manager, who will determine a course of action.
  - ❑ Local Project Administrator: Mike Tremblay, Senior Engineer, certified through 6/30/2023  
Email: mtremblay@portlandmaine.gov  
Phone: (207) 874-8881
2. **ROLE OF MAINEDOT.** MaineDOT will assign a Project Manager to carry out MaineDOT’s responsibilities. The Project Manager or a designee will have the authority to request design changes to meet applicable laws, regulations and design standards; accept and reject invoices; inspect construction activities; and take all other action to assure proper performance of this Agreement.
  - ❑ Project Manager: Brian Keezer, Senior Project Manager  
Email: Brian.keezer@maine.gov  
Phone: (207) 624-3612

## FINANCIAL OBLIGATIONS

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1. **AUTHORIZATION.** Work eligible for federal participation may take place as of the effective date of the original Cooperative Agreement, which is September 4, 2018.
2. **PROJECT COST.** The MPO programmed for the Project from its capital allocation a total of **\$3,272,236.00** (Project Cost). Federally participating costs shall not exceed this Project Cost without written approval from the MPO and MaineDOT, which will execute a modification to this Agreement if the MPO authorizes additional funding.

Estimated Local Match		Federal Share		Estimated Project Cost
25%	\$818,059.00	75%	\$2,454,177.00	\$3,272,236.00

- A. **FEDERAL SHARE.** MaineDOT, using federal funds programmed by the MPO from its capital allocation, will share in the Project Cost at the rate of 75 percent, up to **\$2,454,177.00**.
  - B. **MUNICIPAL SHARE.** The Municipality shall share in the Project Cost at the rate of 25 percent, for an estimated contribution of **\$818,059.00**. The Municipality shall be fully responsible for costs exceeding the estimated Project Cost and costs deemed ineligible for federal participation.
  - C. **FINAL COST.** If the actual cost of the Project is less than the estimated Project Cost, the final amounts owed will be adjusted in accordance with the share percentages set out above.
3. **REIMBURSEMENT.** Costs incurred by the Municipality that are eligible for reimbursement from MaineDOT shall be limited to construction and construction engineering work, in accordance with Section 3(e) of the original Cooperative Agreement, “Modification of Project Costs and Subsequent Construction Implementation.” The Municipality shall invoice MaineDOT periodically seeking reimbursement of the federal share of such costs incurred. Invoices should be modeled after *Communication 4* from the LPA Manual, as follows:

- A. Invoices shall be submitted on a schedule agreed to by the Parties.
  - B. Each invoice shall include a progress report for the service period of the invoice.
  - C. Each invoice shall document the charges incurred and proof of payment made in sufficient detail to satisfy the MaineDOT Project Manager.
  - D. Each invoice shall show MaineDOT's and the Municipality's portions of Project costs, including a running total of costs incurred to date.
  - E. The Municipality must certify that amounts claimed are correct and not claimed previously.
  - F. Upon completion of the work and payment of all remaining invoices for the Project, the Municipality shall submit to MaineDOT a request for final reimbursement modeled after *Communication 20* from the LPA Manual. Payment of this final invoice shall be contingent upon a passing inspection of the Project by MaineDOT or its designee and the receipt by MaineDOT of a completed consultant evaluation from the Municipality.
4. MAINEDOT COSTS. MaineDOT will charge to the Project costs incurred for services performed for the Project. The Municipality shall share in these costs commensurate with its share percentage of the Project. MaineDOT will reconcile these costs periodically and deduct the Municipality's portion from subsequent requests for reimbursement under Section 3, "Reimbursement."
5. TERM. The Municipality shall complete the Project by the Expiration Date at the top of this Agreement. Any request for a date extension shall be submitted to MaineDOT in writing before the end of the original period of performance.
6. REPAYMENT. If the Municipality withdraws from the Project, causing cancellation of the Project, the Municipality shall refund all Project payments made by MaineDOT and reimburse MaineDOT in full for costs incurred on the Project.
7. 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 shall not be limited to, the State of Maine's option to withhold for the purposes of set-off money due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT regarding this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing before the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason – including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal 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. When applicable, MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.
8. NON-APPROPRIATION. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill its obligations arising hereunder, by law such obligations are subject to available budgetary appropriations by the Federal Government and, therefore, this Agreement creates no obligation on behalf of MaineDOT exceeding such appropriations.

9. REMAINING FUNDS. MaineDOT will make available to the MPO any federal funds remaining in the Project once MaineDOT has paid the final invoice from the Municipality or otherwise closed out this Agreement. Additionally, any federal funds returned to MaineDOT by the Municipality shall be made available to the MPO upon closeout of the Project.

## **PROJECT DEVELOPMENT**

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1. KICKOFF. The Parties, at their discretion, may hold a kickoff meeting to go over the scope of work, Project Cost, schedule, and legal requirements for the Project upon execution of this Agreement.
2. DESIGN. The Municipality, in coordination with its contracted consultant, shall submit a package of final design plans, specifications and an updated cost estimate (PS&E) to MaineDOT for review before requesting construction authorization, as follows:
  - A. MaineDOT will enforce all laws, regulations, construction standards and specifications that apply to the Project and will require changes if they are not met.
  - B. MaineDOT will give the Municipality construction authorization after:
    - i. The Municipality addresses all comments from MaineDOT; and
    - ii. MaineDOT accepts the final PS&E package as complete.
  - C. Receipt of construction authorization shall not relieve the Municipality and its contracted consultant of responsibility for meeting all engineering standards and regulatory requirements that apply to the Project.
3. PUBLIC INVOLVEMENT. Public involvement shall be governed by the original Cooperative Agreement, Section 4, "Public Involvement." The Municipality shall provide MaineDOT with a public process certification modeled after Communication 10 from the LPA Manual, as part of the Project's final PS&E package.
4. PERMITS. The Municipality shall obtain all approvals, permits and licenses required to carry out the Project. The Municipality shall provide MaineDOT with copies of all such documents and an environmental certification modeled after Communication 12 from the LPA Manual, as part of the final PS&E package for the Project.
5. UTILITIES. Utility coordination shall be governed by the original Cooperative Agreement, Section 3(b)(iii)(1). The Municipality shall provide MaineDOT with a utility certification modeled after Communication 13 from the LPA Manual, as part of the final PS&E package.
6. RIGHT-OF-WAY. Right-of-Way work on the Project shall be governed by the provisions of the original Cooperative Agreement, Section 3c, "Right of Way Acquisition Activities."
7. ADVERTISE. The Municipality shall use competitive bidding to hire a construction contractor upon receiving written authorization to advertise from MaineDOT, as follows:
  - A. The Municipality shall follow the procedures in the latest edition of MaineDOT's Standard Specifications, Section 102, "Bidding."
  - B. The Municipality shall submit bid tabulations to MaineDOT for review and shall obtain written approval from MaineDOT before awarding a contract.

8. AWARD. Upon receiving written approval from MaineDOT, the Municipality shall award a contract to the lowest responsive and responsible bidder in accordance with the latest edition of MaineDOT's Standard Specifications, Section 103, "Award and Contracting." The Municipality shall administer the contract for the duration of the Project.
9. CONSTRUCTION. During construction of the Project, the Municipality shall:
  - A. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method; and
  - B. Hold a pre-construction meeting with notice of at least 5 working days with representatives of MaineDOT, the contractor, utilities and other parties involved in or affected by the work; and
  - C. Coordinate materials testing necessary to meet the Minimum Testing Requirements that MaineDOT established for the Project; and
  - D. Submit contract modifications to MaineDOT for review and concurrence before executing them, acknowledging that MaineDOT may not reimburse the Municipality for work performed under any modification executed without such prior review; and
  - E. If applicable, provide MaineDOT with revised as-built plans for the completed Project.
10. INSPECTION. MaineDOT or its designee will inspect the completed Project for compliance with the design plans, specifications and construction contract for the Project. MaineDOT may not reimburse the Municipality for the cost of any work out of compliance with the design plans, specifications or construction contract.

## **OPERATION AND MAINTENANCE**

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If applicable, the Municipality shall have maintenance responsibility for portions of the completed Project located in an Urban Compact Area, in accordance with Maine law: Title 23 MRSA, §754, "Town maintenance in compact areas." *This section shall survive the expiration of this Agreement.*

## **RECORDS AND AUDITS**

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1. PROJECT RECORDS. Project Records, whether printed or electronic, shall include all plans, specifications, contracts, reports, notes, or other Project documents prepared by or for the Municipality. The Municipality shall retain all Project Records for at least **3 years** from the date of MaineDOT's acceptance of the final invoice for the Project or the termination of this Agreement, whichever is sooner. 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 related issues are resolved.
2. ACCESS. The Municipality and any contracted party working on its behalf shall allow authorized representatives of the Federal Highway Administration and the State of Maine to inspect and audit Project Records. Copies shall be furnished at no cost to the federal or state agencies requesting them.
3. AUDITS. Project audits shall be performed in accordance with generally accepted government auditing standards and the regulations in 2 CFR §200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
4. *This Records and Audits section shall survive the termination or expiration of this Agreement.*

## MISCELLANEOUS PROVISIONS

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1. **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 §200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”
2. **INDEMNIFICATION.** To the extent allowed by law, the Municipality shall indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, 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. *This indemnification section shall survive the termination or expiration of this Agreement.*
3. **CONFIDENTIALITY.** The Municipality shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost to the extent required by 23 M.R.S. §63, “Confidentiality of Records.”
4. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement:
  - A. The Municipality 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 an actual occupational qualification. The Municipality shall take affirmative action to assure that applicants are employed, and that employees are treated during their employment, regardless of their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The Municipality agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this section.
  - B. The Municipality – in all solicitations or advertising for employees placed by or on behalf of the Municipality relating to this Agreement – shall 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.
  - C. The Municipality shall cause the foregoing provisions to be inserted into any contract for work covered by this Agreement so that such provisions shall be binding upon each contractor, except for contracts or subcontracts for standard commercial supplies or raw materials.
5. **INDEPENDENT CAPACITY.** The Municipality, its employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
6. **FLOW DOWN.** Contracts between the Municipality and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
7. **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.
8. **ENTIRE AGREEMENT.** This document, in combination with Cooperative Agreements filed under CSN 39539 and CSN 39540, represents the entire Agreement between the Parties. Neither

MaineDOT nor the Municipality shall be bound by any statement, correspondence, agreement or representation not expressly contained in these agreements.

### **CONFLICT OF INTEREST**

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By signing this Agreement, the undersigned representative of the Provider certifies that:

1. No officer or employee of the Provider with a financial or other personal interest in any contract or subcontract for the Project shall negotiate, make, accept or approve any such contract or subcontract.
2. No professional performing services for the Provider on the Project shall have a financial or other personal interest in any contract or subcontract for the Project, other than the person's employment or retention by the Provider. No officer or employee of any professional performing services for the Provider on the Project shall have a financial or other personal interest in property acquired for the Project unless such interest is openly disclosed, and such officer or employee has not participated in such acquisition for and on behalf of the Provider.
3. No person or entity entering into a contract for services for the Project shall have a financial or other interest in the Project or in its outcome, other than the performance of the contract. This prohibition covers the following:
  - 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; and
  - B. Any agreement providing incentives or guarantees of future work on the Project or related matters; and
  - C. Any interest in property acquired for the Project unless such property interest is openly disclosed before the person or entity enters into the contract.

### **THIRD-PARTY CERTIFICATION**

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By signing this Agreement, the Municipality certifies that if it contracts with an entity, the Municipality shall require that entity and its principles to certify that they:

1. Have not within the 3 years preceding the date of such a contract been convicted of a crime or had a civil judgment rendered against them in connection with obtaining, attempting to obtain, or performing a federal, state or local public transaction or contract under a public transaction; violation of antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
2. Are not indicted for or otherwise criminally or civilly charged by a federal, state or local governmental entity with commission of any of the offenses enumerated in this section; and
3. Have not within a 3-year period preceding this Agreement had one or more federal, state or local public transactions terminated for cause or default.

### **DEBARMENT**

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1. By signing this Agreement, the Municipality 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 this transaction by any federal department or agency. If



the Municipality cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the Municipality 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.

2. Additionally, the Municipality agrees that it shall not hire a consultant or contractor who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

## **LOBBYING**

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By signing this Agreement, the undersigned municipal representative certifies that:

1. No federal funds have been paid or will be paid, by or on behalf of the Municipality, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, concerning the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or Cooperative Agreement.
2. If any funds other than federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress concerning this federal contract, grant, loan, or Cooperative Agreement, the Municipality shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Municipality shall require the language of this certification to be included in the award documents for all sub-awards and that all sub-recipients shall certify and disclose accordingly.

## **DEFAULT AND TERMINATION**

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1. **DEFAULT.** MaineDOT will send the Municipality a written Notice of Default if the Municipality commits any of the following:
  - A. Fails to advertise the Project within 3 years of the execution date of this Agreement without receiving an extension in writing from MaineDOT;
  - B. Withdraws its support for the Project, resulting in cancellation of the Project;
  - C. Takes any action that makes the Project ineligible for federal funding;
  - D. Uses Project funds for a purpose not authorized by this Agreement;
  - E. Misrepresents or falsifies any claim for reimbursement;
  - F. Fails to meet the standards of performance outlined in this Agreement.
2. **TERMINATION FOR CAUSE.** MaineDOT will have just cause to terminate this Agreement in the event of default by the Municipality, as defined above. MaineDOT will afford the Municipality a cure period of 14 calendar days, effective on the Municipality's receipt of Notice of Default. If the Municipality fails to address all defaults within this cure period or any longer period as MaineDOT may authorize, MaineDOT may terminate this Agreement for cause, with these conditions:

- A. MaineDOT will recover from the Municipality all reimbursements to the Municipality and all of MaineDOT's internal costs for work on the Project. All federal funds recovered from the Municipality shall be made available to the MPO upon closeout of the Project.
3. **TERMINATION FOR CONVENIENCE.** The Parties may terminate this Agreement for convenience by mutual consent for any reason not defined as "default." MaineDOT will reimburse the Municipality for eligible work performed until the effective date of termination for convenience. The Municipality's share of MaineDOT's costs for work on the Project shall be deducted from the final invoice amount owed to the Municipality.

**AGREEMENT APPROVAL**

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The Municipality's undersigned representative assures that the Municipality's official legislative body has approved the Municipality'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 on the date last signed below.

**City of Portland**

**Maine Department of Transportation**

By: \_\_\_\_\_  
**Jon P. Jennings, City Manager \***

By: \_\_\_\_\_  
**Richard J. Crawford, 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. §9502, et seq. – that the signature, if electronic: (a) is intended to have the same force as a manual signature, (b) is unique to me, (c) is capable of verification, (d) is under my sole control, and (e) is linked to data in such a manner that it is invalidated if the data are changed*

## **Federal Funding Accountability and Transparency Act**

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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 Municipality shall sign this document under (B) below and return it with the Project Agreement. Additionally, the Municipality shall provide the following information, if applicable:

- A) The total compensation and names of the top five officers if:
- More than 80% of the Municipality'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<sup>®</sup> number on file with the Central Contractor Registration (CCR):

**City of Portland, Maine**  
Sign and Print Legal CCR Name

**07-174-7802**  
DUNS<sup>®</sup> Number

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Authorized Representative: \_\_\_\_\_  
**Jon P. Jennings, City Manager**

# U.S. Department of Transportation (USDOT)

## Federal Highway Administration – Standard Title VI / Nondiscrimination Assurances

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### **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 (USDOT) 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), which prohibits discrimination based on 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 are referred to hereinafter 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 assure 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 USDOT, 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 Federal-aid Highway Program:

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 (regarding an "activity facilitated, or will be (regarding a "facility operated, or will be (regarding 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-Aid 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 assure 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 regarding any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the City of Portland 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 and USDOT 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 and USDOT. You must keep records, reports, and submit the material for review upon request to the FHWA and USDOT, 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 City of Portland gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal and Federal financial assistance extended after the date hereof to the recipients by the USDOT under the Federal-Aid Highway Program. This ASSURANCE is binding on the State of Maine, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Federal-Aid Highway Program. The person signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

**City of Portland**

By \_\_\_\_\_  
**Jon P. Jennings, City Manager**

DATED \_\_\_\_\_

Encl.: Appendices A and E

## APPENDIX A TO THE TITLE VI ASSURANCES

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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 (FHWA)**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, regarding 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 **FHWA**, 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 **FHWA**, 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 **FHWA** 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.
6. **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 **FHWA** 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

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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 based on 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 programs and projects);
- Federal Highway Act of 1973, (23 U.S.C. §324 et seq.), (prohibits discrimination based on sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 et seq.), as amended, (prohibits discrimination based on disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 et seq.), (prohibits discrimination based on 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 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 based on 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 based on race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which assures 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 assure compliance with Title VI, you must take reasonable steps to assure 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.).





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

**MAINE DEPARTMENT OF TRANSPORTATION**  
**Agreement for a State-Funded Locally Administered Project**  
 With the  
**City of Portland**  
 Regarding  
**ADA Upgrades at Woodford’s Corner**  
 (Payable)

<i>MaineDOT Use Only</i>	
Agreement Amount: <u>\$60,000.00</u>	MaineDOT WIN: <u>020543.20</u>
State Share: <u>\$60,000.00</u>	WIN Activation Date: <u>04/16/2019</u>
Local Share: <u>\$0.00</u>	Municipality’s Vendor ID: <u>VC1000073476</u>
Effective Date: <u>Upon MaineDOT’s Signature</u>	Expiration Date: <u>12/31/2022</u>

This Agreement for a federally funded locally administered project is entered into by the State of Maine Department of Transportation (**MaineDOT**) with its headquarters at 16 Child Street in Augusta, Maine, and the City of Portland (the **Municipality**) with its principal offices at 389 Congress Street in Portland, Maine, which jointly shall be referred to as the **Parties**.

**RECITALS**

1. This Agreement shall apply to construction and construction engineering work to upgrade curb ramps in the vicinity of the Woodford’s Corner section of Forest Avenue to comply with the Americans with Disabilities Act, as follow-up work to a reconstruction project originally completed under WIN 020543.00 (the **Project**); and
2. The Municipality shall administer the Project at MaineDOT’s request in conjunction with a separate locally administered project to construct a roundabout at Deering’s Corner, next to the University of Southern Maine campus, WIN 18624.00.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing statements, the Parties agree to the following:

**APPENDICES**

There are no appendices associated with this Agreement.

**ROLES AND RESPONSIBILITIES**

1. **ROLE OF MUNICIPALITY**. The Municipality shall designate a municipal Project Coordinator with appropriate qualifications to manage the Project and carry out its responsibilities under this Agreement. This Project Coordinator shall abide by applicable sections of the latest edition of MaineDOT’s Local Project Administration Manual & Resource Guide (LPA Manual).
  - Local Project Administrator: Mike Tremblay, Senior Engineer, certified through 6/30/2023  
 Email: [mtremblay@portlandmaine.gov](mailto:mtremblay@portlandmaine.gov)  
 Phone: (207) 874-8881

2. **ROLE OF MAINEDOT.** MaineDOT will assign a Project Manager to carry out the State of Maine’s responsibilities. This person or his authorized designee will have the authority to accept and reject invoices; review construction activities to assure compliance with contract documents; and take all other action to assure proper performance of this Agreement.

- Project Manager: Brian Keezer, Senior Project Manager  
 Email: Brian.Keezer@maine.gov  
 Phone: (207) 624-3612

**FINANCIAL OBLIGATIONS**

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1. **AUTHORIZATION.** MaineDOT’s financial participation in the Project will begin after MaineDOT has executed this Agreement and issued the Municipality a written notice to proceed.

2. **PROJECT COST.** The estimated cost of the Project is **\$60,000.00** (Project Cost), as set out below.

Estimated Local Match		State Share		Estimated Project Cost
0%	\$0.00	100%	\$60,000.00	\$60,000.00

A. **MAINEDOT SHARE.** MaineDOT will reimburse the Municipality in full for all costs eligible for funding from the State, up to a maximum contribution of **\$60,000.00**. If the Project Cost exceeds this amount, MaineDOT upon written notice from the Municipality will add funding sufficient to complete the Project and modify this Agreement to reflect the new amount.

B. **LOCAL MATCH.** Since the Municipality is performing work on the Project at the request of MaineDOT, there shall be no local share associated with the Project.

3. **REIMBURSEMENT.** MaineDOT will reimburse the Municipality for the State’s portion of eligible costs incurred on the Project. The Municipality shall submit invoices to MaineDOT Project Manager in the format provided in *Communication 4* from the LPA Manual, as follows:

- A. Invoices shall be submitted on a schedule agreed to by the Parties.
- B. Each invoice shall include a progress report for the service period of the invoice.
- C. Each invoice shall document the charges incurred and proof of payment made in sufficient detail to satisfy the MaineDOT Project Manager.
- D. Each invoice shall show MaineDOT’s and the Municipality’s portions of Project costs, including a running total of costs incurred to date.
- E. The Municipality must certify that amounts claimed are correct and not claimed previously.
- F. Payment of the final invoice from the Municipality shall be contingent upon an inspection of the completed Project by MaineDOT or its designee.

4. **TERM.** The Municipality shall complete the Project by the Expiration Date at the top of this Agreement. Any request for an extension shall be submitted to MaineDOT in writing before the end of the original period of performance.

5. **REPAYMENT.** If the Municipality fails to complete the Project, the Municipality shall refund all Project payments from MaineDOT and reimburse MaineDOT for costs incurred on the Project.

6. STATE OF MAINE’S RIGHT 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’s option to withhold for purposes of set-off money due to the Municipality under this Agreement up to any amount due to the State with regard to this Agreement or any other agreement with MaineDOT; any other agreement with any state agency, including any agreement for a term commencing before the term of this Agreement; and any amount due to the State for any other reason including, but not limited to, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT will exercise its rights of set-off in accordance with standard state practices including, in cases of set-off pursuant to an audit, finalization of the audit by MaineDOT or the State Controller.
7. NON-APPROPRIATION. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees 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 such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create obligation on behalf of MaineDOT exceeding such appropriations.

## **PROJECT DEVELOPMENT**

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1. KICKOFF. The Parties at their discretion may hold a project kickoff to go over the scope of work, Project Cost, schedule, and legal requirements for the Project upon execution of this Agreement.
2. PROGRESS REPORTS. The Municipality shall provide progress reports at intervals established by MaineDOT’s Project Manager.
3. CONSULTANT WORK. The Municipality shall use a qualifications-based selection to hire any consultant paid with state funds out of the Project.
4. DESIGN. MaineDOT completed design work for the Project as part of the original scope of work under WIN 020543.00.
5. PERMITS. All permits necessary to carry out the Project were obtained as part of the original scope of work completed under WIN 020543.00.
6. UTILITIES. All utility coordination required to carry out the Project was performed under the original scope of work completed under WIN 020543.00.
7. RIGHT-OF-WAY. Acquisition of right-of-way is not anticipated as part of this Project.
8. ADVERTISE. The Municipality shall use competitive bidding to hire a construction contractor upon receiving written authorization from MaineDOT, as follows:
  - A. The Municipality shall follow the procedures in MaineDOT’s Standard Specifications (November 2014 Edition), Section 102, “Bidding.”
  - B. The Municipality shall submit bid tabulations to MaineDOT for review and shall obtain written approval from MaineDOT before awarding a contract.
9. AWARD. Upon receiving written approval from MaineDOT, the Municipality 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 Municipality shall administer the contract for the duration of the Project.

10. CONSTRUCTION. During construction of the Project, the Municipality shall:

- A. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method; and
- B. Hold a pre-construction meeting with notice of at least 5 working days involving MaineDOT, the contractor, utilities and other parties involved in or affected by the work; and
- C. Coordinate materials testing necessary to meet the Minimum Testing Requirements that MaineDOT established for the Project; and
- D. Submit contract modifications to MaineDOT for review and concurrence before executing them, acknowledging that MaineDOT may not reimburse the Municipality for work performed under any modification executed without such prior review; and

11. INSPECTION. MaineDOT will inspect the completed Project for compliance with the design plans, specifications and provisions of the construction contract. MaineDOT may not reimburse the Municipality for work that is out of compliance with the design plans, specifications and provisions of the construction contract.

## **OPERATION AND MAINTENANCE**

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Upon completion, the Municipality shall operate and maintain the Project for its useful design life as determined by accepted engineering standards. Maintenance shall consist of general upkeep, including snow and ice control, and repairs necessary to preserve year-round public access with only isolated or temporary interruptions. *This section shall survive the expiration of this Agreement.*

## **RECORDS AND AUDITS**

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- 1. Project Records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the Municipality. The Municipality 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 are resolved.
- 2. The Municipality and any contracted party working on its behalf shall allow authorized representatives of the State of Maine to inspect and audit Project Records. Copies shall be furnished at no cost to the agencies requesting them.
- 3. Audits shall be performed in accordance with generally accepted government auditing standards.
- 4. *This Records and Audits section shall survive the termination or expiration of this Agreement.*

## **MISCELLANEOUS PROVISIONS**

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- 1. GOVERNING LAW. The Parties agree to comply with all applicable federal, state and local laws, regulations, executive orders and ordinances.
- 2. INDEMNIFICATION. To the extent allowed by law, the Municipality 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 Municipality, 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. ***This indemnification section shall survive the termination or expiration of this Agreement.***

3. **CONFIDENTIALITY**. The Municipality shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost to the extent required by 23 M.R.S.A. Section 63, “Confidentiality of Records.”
4. **EQUAL EMPLOYMENT OPPORTUNITY**. During the performance of this Agreement:
  - A. The Municipality 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 an actual occupational qualification. The Municipality shall take affirmative action to assure that applicants are employed and employees are treated during their employment without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The Municipality agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
  - B. The Municipality – in all solicitations or advertising for employees placed by or on behalf of the Municipality relating to this Agreement – shall 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.
  - C. The Municipality shall cause the foregoing provisions to be inserted into any contract for work covered by this Agreement so that the provisions are binding upon each contractor, except for contracts or subcontracts for standard commercial supplies or raw materials.
5. **INDEPENDENT CAPACITY**. The Municipality, its employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
6. **FLOW DOWN**. Contracts between the Municipality and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
7. **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.
8. **ENTIRE AGREEMENT**. This document represents the entire Agreement between the Parties. Neither MaineDOT nor the Municipality shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

## **CONFLICT OF INTEREST**

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1. No person or entity with a financial or personal interest in any contract or subcontract for the Project shall negotiate, make, accept or approve any such contract or subcontract.
2. The Municipality shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for the Project who has a financial or other personal interest in any contract or subcontract for the Project, other than the person’s employment or retention by the

Municipality. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the Municipality 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 Municipality.

3. No person or entity entering into a contract for the Project may have a 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; and
  - 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 was disclosed before the person or entity entered into the contract.

## **DEBARMENT**

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1. By signing this Agreement, the Municipality 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 Municipality cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the Municipality 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.
2. If the Municipality contracts with any third party pursuant to this Agreement, the Municipality shall require that party and its principals to certify that they:
  - A. Have not within a 3-year period preceding the execution of any such contract been convicted of a crime or had a civil judgment rendered against them in connection with the following:
    - i. Obtaining, attempting to obtain, or performing a federal, state or, local public transaction or contract under a public transaction;
    - ii. Violating federal or state antitrust statutes;
    - iii. Committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - B. Are not under indictment for or otherwise criminally or civilly charged by a federal, state, or local agency with commission of any offense enumerated in paragraph 2A above; and
  - C. Have not within a 3-year period preceding this Agreement had one or more federal, state, or local public transactions terminated for cause or default.
3. The Municipality 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.

## **DEFAULT AND TERMINATION**

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1. **DEFAULT.** MaineDOT will send the Municipality a written Notice of Default if the Municipality takes any of the following actions:
  - A. Fails to complete the Project;
  - B. Takes any action that renders the Project ineligible for state funding;
  - C. Uses Project funds for a purpose not authorized by this Agreement;
  - D. Misrepresents or falsifies any claim for reimbursement;
  - E. Fails to meet the standards of performance outlined in this Agreement.
  
2. **TERMINATION FOR CAUSE.** MaineDOT will have just cause to terminate this Agreement in the event of default by the Municipality, as defined above. MaineDOT will afford the Municipality a cure period of 14 calendar days, effective on the Municipality's receipt of Notice of Default. If the Municipality 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:
  - A. MaineDOT will recover from the Municipality all reimbursements made to the Municipality and all of MaineDOT's internal costs incurred for work on the terminated Project.
  - B. The Municipality shall forfeit all state funds remaining in the terminated Project.
  
3. **TERMINATION FOR CONVENIENCE.** The Parties may terminate this Agreement for convenience by mutual consent for any reason not defined as "default." MaineDOT will reimburse the Municipality for eligible work performed until the effective date of termination for convenience. The Municipality's share of MaineDOT's costs for work on the Project shall be deducted from the final amount owed to the Municipality.

## **AGREEMENT APPROVAL**

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The Municipality's undersigned representative assures that the Municipality's official legislative body has approved the Municipality'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 on the date last signed below.

**City of Portland**

**Maine Department of Transportation**

By: \_\_\_\_\_  
**Jon P. Jennings, City Manager \***

By: \_\_\_\_\_  
**Richard J. Crawford, 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. §9502, et seq. – that the signature, if electronic: (a) is intended to have the same force as a manual signature, (b) is unique to me, (c) is capable of verification, (d) is under my sole control, and (e) is linked to data in such a manner that it is invalidated if the data are changed.*

