

Order 148-19/20

Passage: 9-0 on 3/30/2020

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**

Effective 3/9/2020

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

**ORDER APPROVING THE THREE-PARTY AGREEMENT BETWEEN PORTLAND,  
THE PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM  
AND THE MAINE DEPARTMENT OF TRANSPORTATION  
RE: MARGINAL WAY IMPROVEMENTS**

**ORDERED**, that the three-party Municipal Partnership Initiative Program Agreement between the Maine Department of Transportation, the Portland Area Comprehensive Transportation System and the City of Portland for Marginal Way Improvements 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.



*MaineDOT use only*  
 TEDOCS #: Enter TEDOCS #  
 CTM #: Enter CTM #  
 CSN #: Enter CSN #  
 PROGRAM: Bureau of Planning

**State of Maine**  
**DEPARTMENT OF TRANSPORTATION**  
Portland Area Comprehensive Transportation System  
Municipal Partnership Initiative Agreement  
 Proposed Improvements to Marginal Way  
 (Payable to Municipality)

| <i>MaineDOT Use Only</i>                              |  |
|---|--|
| Project Location: <u>Portland</u>                     | Estimated Project Amount: <u>\$425,504.00</u>                  |
| State WIN: <u>(To be issued after WIN Activation)</u> | MPO Share: <u>\$212,752.00</u>                                 |
| PACTS ID#: <u>PACTS</u>                               | Municipal Share: <u>\$212,752.00</u>                           |
| Municipality Id#: <u>VC1000073472</u>                 | Agreement Begin Date: <u>Upon MaineDOT Signature</u>           |
|   | Agreement End Date: <u>5 years from date last signed below</u> |

This Cooperative Agreement (the “Agreement”) is entered into by and between the Maine Department of Transportation (MaineDOT), an agency of state government, the City of Portland (the “Municipality”), a municipality in the State of Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (PACTS), and Greater Portland Council of Governments (GPCOG), a fiduciary agent for PACTS. (MaineDOT, the Municipality, PACTS, and GPCOG) are collectively referred to as the “Parties”).

**RECITALS**

- A. 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.
- B. PACTS has created and administers a Municipal Partnership Initiative program (the “PACTS MPI Program”), the purpose of which is to participate in the funding of approved collector and/or arterial roadway projects (the “MPI Project(s)”) with the intention of restoring substandard State and State Aid highways to MaineDOT and PACTS minimum standards.

- C. MPI Projects are administered by the municipality in which the project is being constructed. PACTS' participation in an MPI Project is accomplished through its acceptance of the Project into the PACTS MPI Program, and the contribution of state funds allocated to PACTS and disbursed by MaineDOT to the administering municipality on PACTS' behalf (the "PACTS Share"). MPI Project costs not paid by the PACTS Share are paid by the administering municipality.
- D. The work that is the subject of this Agreement consists of a 1-1/2 inch overlay and new pavement marking for lane delineation to include a designated bike lane on Marginal Way, beginning at Forest Avenue and extending north 0.46 of a mile to Franklin Street (the "Project"), and is generally outlined in **Appendix A**, made a part herewith.
- E. PACTS has selected the Project for inclusion in the 2018-2019-2020 MaineDOT Work Plan, using state capital improvement funding allocated by MaineDOT.
- F. The Municipality has approved the Project and supports the decision by MaineDOT and PACTS to program the Project, and is prepared to administer and fund the Project in accordance with the terms of this Agreement.
- G. 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.
- H. This Agreement is intended to cover the roles and responsibilities of the Parties through full Project development and construction, and to establish the financial obligations of each Party.

**AGREEMENT**

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

**1. Appendices:**

The following appendices are hereby incorporated into this Agreement:

- Appendix A - PACTS Letter to MaineDOT Outlining Scope and Cost of MPI Project
- Check if no appendices attached

**2. Project Cost Sharing and Payment Schedule:**

**a. Financial Obligations:**

**i. Total Project Costs.**

- 1. PACTS and the Municipality 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 negotiated by mutual agreement of the Parties.

- a. **PACTS Share** (provided through PACTS’ state allocation and disbursed by MaineDOT) - 50% of eligible Project costs, up to a maximum of \$212,752.00.
  - b. **Municipal Share** (provided through the Municipality’s obligation of funds) - 50% of eligible Project costs, plus 100% of any and all remaining Project Costs once the PACTS Share has been exhausted (the “Overage”).
2. The estimated Total Project Costs are \$425,504.00 (the “Estimated Total Project Costs”) and are allocated in the table below. If the Estimated Total Project Costs are adjusted to reflect updated costs, the Municipality will consult with PACTS before such adjustments are approved and implemented.

| <b>Total Project Costs</b>                                    | <b>PACTS Share<br/>(State MPO Funds)<br/>50%<br/>(Max. \$212,752.00)</b> | <b>Municipality’s<br/>Share<br/>50% + Overage</b> | <b>Estimated<br/>Total<br/>Cost</b> |
|---|--|---|-------------------------------------|
| <b>Estimated Total Project Costs:</b>                         |  |   |                                     |
| <u><b>\$ 425,504.00</b></u>                                   |  |   |                                     |
| <b>Estimated Allocated Shares</b>                             | \$212,752.00   | \$212,752.00<br>+\$0.00                           | \$425,504.00                        |
| <b>Total Party Share of Estimated<br/>Total Project Costs</b> | <b>\$212,752.00</b>  | <b>\$212,752.00</b>                               | <b>\$425,504.00</b>                 |

- b. **Payment Schedule:** The Municipality shall be the sole administrator of the Project contract(s) and shall pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified above.
  - i. The Municipality may begin invoicing PACTS for the PACTS Share of eligible Project costs upon 1/3 Project completion. Invoices shall be submitted no more than monthly with a maximum number of invoice submittals not to exceed five (5) invoices for the total Project.
  - ii. The Municipality shall submit to PACTS for reimbursement detailed invoice(s) documenting actual amounts incurred for Project related costs, together with evidence of such invoices having been paid by the Municipality, and identifying PACTS’ share of each invoice submitted.
  - iii. Each invoice shall include the Municipality’s certification that all amounts claimed are correct, and not previously claimed.
  - iv. PACTS shall review each such invoice and, upon approval, shall forward each invoice to MaineDOT for payment to the Municipality out of PACTS’

allocated state MPO funds. MaineDOT shall reimburse the Municipality accordingly within thirty (30) days of its receipt of such approved invoice(s) in an aggregate amount not to exceed the total PACTS Share.

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

- 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;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or engineer's estimate of costs.

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

- a. The Municipality shall prepare, or cause to be prepared, all plans, specifications, engineer's estimates and contract documents for the Project within the scope of work identified above, using a standard project development process to ensure adherence to federal and state regulations (the "Preliminary Project Development Materials").
- b. The Municipality shall retain a Professional Engineer licensed in the State of Maine to oversee all Project activities (the "Project Engineer").
- c. The Project must be designed by a Professional Engineer licensed in the State of Maine (the "Design Engineer") and in compliance with MaineDOT's design standards (the "Design Standards").
  - i. The Design Engineer shall provide certification to the Parties that, in his/her professional opinion, the Project will provide a smooth ride and not reduce the safety, mobility or structural quality of the affected State and/or State Aid Highway.
  - ii. All design documents must be stamped and signed by the Design Engineer in accordance with the provisions of this Section.
- d. MaineDOT reserves the right to review and comment on all plans and specifications with the focus on ensuring that the Project will achieve the anticipated benefits and will not degrade safety.
- e. The Municipality, through its Project Engineer, shall obtain written approval from MaineDOT for any exceptions to the "Design Standards". Submitted documentation shall compare the proposed design to the existing conditions for each proposed exception. Any and all exceptions shall be listed on the cover sheet accompanying the Project plans and submitted to MaineDOT, accompanied by a request for acceptance

of the Project's design exceptions. All such requests must include the signature and professional stamp of the Professional Engineer responsible for the design of the Project.

- f. In developing the Project, the Municipality shall ensure that the following elements are satisfied:
  - i. The Project improvements must have a minimum useful life of ten (10) years;
  - ii. The safety of the corridor and the life of the resulting structural and design elements shall be equal to or better than the existing conditions and design;
  - iii. The structures, roadways and design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;
  - iv. The Project shall not introduce any unanticipated safety hazards to the traveling public;
  - v. The Project shall retain the same level or an improved level of mobility of travel within the corridor;
  - vi. The Project shall not in any manner decrease the life expectancy of the affected component(s) of Maine's transportation system;
  - vii. The Project shall meet the most recent Americans with Disabilities Act of 1990 (ADA) design requirements;
  - viii. Traffic control and the safety of pedestrians, bicyclists and the traveling public shall be provided for at all times.
- g. The Municipality shall coordinate with affected utilities to identify existing utility locations and/or any utility relocation impacts that may be created by the development of the Project.
- h. It is expected that the Project can be constructed within the existing right-of-way limits. If that is not the case, the Municipality must provide MaineDOT with a detailed explanation of the property rights required for the Project and shall acquire any such property rights in accordance with all applicable state and federal laws. The PACTS Share may only be applied to costs associated with the acquisition of property rights required for the implementation of the Project.
- i. The Municipality shall perform all necessary federal, state and local permitting activities required in connection with the Project.
- j. Project construction must commence within twelve (12) months and must be certified as complete within twenty-four (24) months of the date of execution of this Agreement. If this timeline is not met, and the Municipality cannot show that it has made a good faith effort to meet this timeline, PACTS retains the right to withdraw any unpaid

portion of the PACTS Share and reallocate its remaining funding to other eligible projects in its service area.

- k. Upon completion of Project construction, the Municipality shall provide certification to MaineDOT from the Project Engineer stating that the Project is complete and has been constructed in accordance with the plans and specifications.

**5. Public Involvement:**

The Municipality shall be responsible for implementing and leading any and all required public involvement processes and activities, including those required by Maine's Sensible Transportation Policy Act, and any necessary media coordination associated with the any phases of the Project covered by this Agreement.

**6. Changes to Project Scope:**

The Municipality will consult with MaineDOT and PACTS before implementing any adjustments to the Project scope.

**7. Termination:**

- a. In the event the Municipality decides to terminate the Project for any reason prior to the award of a contract to construct the Project and that termination under this clause is not directed by MaineDOT and PACTS, the Municipality shall be responsible for covering all Project costs incurred up to the time of termination.
- b. This Agreement may be terminated at any time by mutual written agreement of all Parties.
- c. In no event, shall any such action taken under this subsection 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.
- d. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.

**8. Miscellaneous Provisions:**

- a. Quality of Work. PACTS reserves the right to require the Municipality to refund all reimbursements made and to repay PACTS fully for all Projects costs incurred if the work is found to be unsatisfactory.
- b. Reprogramming of Remaining PACTS Funds. Any state MPO funds allocated to the Project that remain unspent following payment of the final invoice and reconciliation of the Project shall be made available to PACTS for reprogramming once the Project is closed out.

- c. 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.
- d. Assumption of Responsibility. The Municipality hereby assumes responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of the Municipality, its employees, agents or representatives, and shall ensure that its contractor(s) assume the same responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of its own employees, agents or representatives. This assumption of responsibility shall also include damage to vehicles passing through the Project limits.
- e. Obligation of State Funds. Notwithstanding anything herein to the contrary, 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, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- f. Performance. The Parties will avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- g. 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 set out herein.
- h. 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 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.
- i. Assignment. No assignment of this agreement is contemplated, and in no event, shall any assignment be made without the express written permission of the Parties.



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



Date 4/13/19

Kristina Egan, Executive Director \*  
Greater Portland Council of Governments and  
For Portland Area Comprehensive Transportation System  
Duly authorized

Date \_\_\_\_\_

Jon Jennings, City Manager \*  
Municipality of Portland  
Duly authorized

Date \_\_\_\_\_

Andrew T. Bickmore, Acting 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.*

**APPENDIX A**

**PACTS Letter to MaineDOT Outlining Scope  
and Cost of MPI Project**

## Portland Area Comprehensive Transportation System

Darryl Belz, P.E.  
Safety/MPO Engineer  
Bureau of Planning  
Maine Department of Transportation  
16 State House Station  
Child Street  
Augusta, Maine 04433-0016

May 3, 2019

### **PACTS 2020 Municipal Partnership Initiative Project: Portland, Marginal Way Pavement Rehabilitation**

Darryl,

The following is a request to develop a Municipal Partnership Initiative (MPI) agreement for the above project for the 2020 PACTS MPI program.

On April 25<sup>th</sup>, 2019 the PACTS Policy Committee approved programming \$212,752 of PACTS' CY2020 state funding allocation for the following project:

#### **Portland, Marginal Way Pavement Rehabilitation**

Bangor Savings Bank to AT&T/Planet Dog by 1.5-inch surface overlay and new pavement marking to delineate vehicle lanes and an on-road bike lane.

The Route Log Miles are from 0.04 miles to 0.50 miles for a total project length of 0.46 miles.

The scope consists of 1.5-inch surface overlay and new pavement marking for lane delineation (to include a designated bike lane). The city will soon accept proposals for an adjacent project that will install ADA standard curb ramps, repair sidewalks, reinstall a traffic signal at Chestnut Street, and relocate a crosswalk/RRFB. The total cost estimate for the pavement rehabilitation is \$425,504.

Construction complete year is scheduled to be 2020.

The funding is 50%/50% at \$212,752 state and \$212,752 local.

PACTS is requesting a WIN for the project and a three-party agreement to follow.

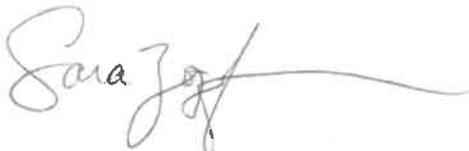
The municipal contact is Chris Branch. He is aware of contract documents needed such as, a scope of work, unit prices and complete specifications. These documents will be similar or the same as a MaineDOT "Book Project", including a set of plans as necessary to be outlined in the pending agreement.

*The Metropolitan Planning Organization for the Portland Urbanized Area*

970 Baxter Blvd • Portland, Maine 04103  
Telephone: (207) 774-9891 • Fax: (207) 774-7149 • [www.pactsplan.org](http://www.pactsplan.org)

Thank you for your attention to this matter. If you have any questions, please call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sara Zografos", with a long horizontal flourish extending to the right.

Sara Zografos  
FACTS

cc: Chris Branch, City of Portland  
Harold Spetla, GPCOG