

Order 9-21/22

Passage: 8-0 (Thibodeau absent) on 8/23/2021

Effective 9/2/2021

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

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE AGREEMENT BETWEEN THE MAINE
DEPARTMENT OF TRANSPORTATION AND THE CITY OF PORTLAND
RE: FRANKLIN STREET AND MARGINAL WAY**

ORDERED, that the Municipal/State Agreement between the Maine Department of Transportation and the City of Portland for traffic improvements on Franklin Street and Marginal Way with Work Identification Number 025089.00, 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> |
| AMS ID: _____ |
| CSN: _____ |
| PROGRAM: <u>Multimodal Program</u> |

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federally Funded Locally Administered Project

With the

City of Portland

Regarding

Improvements to the Intersection of Franklin Street and Marginal Way

| <i>For MaineDOT Use Only - Payable</i> | |
|--|---|
| Agreement Amount: <u>\$360,000.00</u> | Federal Authorization Date: <u>06/10/2021</u> |
| Federal Share: <u>\$324,000.00</u> | Federal Project #: <u>2508900</u> |
| State Share: <u>\$36,000.00</u> | MaineDOT WIN: <u>025089.00</u> |
| Local Share: <u>\$0.00</u> | Municipality's Vendor ID: <u>VC1000073476</u> |
| Effective Date: _____ | Municipality's DUNS #: <u>07-174-7802</u> |
| Expiration Date: <u>12/31/2026</u> | CFDA #: <u>20.205 Highway Planning and Construction</u> |

This subaward agreement (the **Agreement**) for a federal-aid project is entered into by the State of Maine Department of Transportation (**MaineDOT**) with its headquarters at 24 Child St., Augusta, Maine, and the City of Portland (the **Municipality**) with its principal administrative offices at 389 Congress St., Portland, Maine, which jointly shall be referred to as the **Parties**.

RECITALS

- A. This Agreement shall apply to traffic signal replacements and ADA compliance upgrades at the intersection of Franklin Street and Marginal Way (the **Project**); and
- B. The Municipality was awarded federal funding from MaineDOT's traffic safety program for the Project to be placed in the MaineDOT Work Plan for calendar years 2021-2023; and
- C. The Municipality, unless otherwise specified in this Agreement, shall carry out all stages of the Project as a Locally Administered Project (LAP), subject to oversight from MaineDOT in accordance with Title 23 USC §106(g) to ensure that all requirements of this Agreement are met.

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).
- Requirements for operation and maintenance of traffic signals.

ROLES AND RESPONSIBILITIES

1. **ROLE OF MUNICIPALITY**. The Municipality shall assign a full-time employee with appropriate qualifications and Local Project Administration (LPA) certification from MaineDOT to be responsible for the Project. This local project administrator shall abide by the latest edition of MaineDOT's Local Project Administration Manual & Resource Guide (LPA Manual). If this certified administrator ceases to oversee the Project, the Municipality shall notify MaineDOT.
 - ❑ Local Project Administrator: Jeremiah Bartlett, Transportation Systems Engineer
Email: jbartlett@portlandmaine.gov
Phone: 207-874-8891
2. **ROLE OF MAINEDOT**. MaineDOT will assign a Project Manager to carry out the State of Maine's responsibilities. The Project Manager or 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 the proper performance of this Agreement.
 - ❑ Project Manager: Jerry Dostie, Multimodal Program
Email: Gerald.P.Dostie@maine.gov
Phone: 207-624-3457

FINANCIAL OBLIGATIONS

1. **AUTHORIZATION**. The Municipality shall not begin reimbursable work on the Project until MaineDOT executes this Agreement and gives the Municipality written notice to proceed.
2. **PROJECT COST**. The estimated cost of the Project is **\$360,000.00** (Project Cost), as set out below.
 - A. **FEDERAL SHARE**. MaineDOT will contribute federal-aid funding to the Project from the Federal Highway Administration (FHWA) at the rate of 90 percent, up to **\$324,000.00**.
 - B. **STATE SHARE**. MaineDOT will contribute state funds to the Project at the rate of 10 percent, up to **\$36,000.00**.
 - C. **LOCAL SHARE**. There shall be no local matching share for the Project. The Municipality, however, shall be responsible for the following items, as applicable:
 - i. All costs exceeding \$360,000.00, unless otherwise agreed upon by the Parties through an executed modification to this Agreement;
 - ii. All costs incurred before the effective date of this Agreement; and
 - iii. All costs that MaineDOT or the FHWA deem ineligible for federal participation.
3. **FINANCIAL UPDATES**. MaineDOT's Project Manager will review the estimated Project Cost with the Municipality at Plan Impacts Complete and at final Plans, Specifications & Estimate (PS&E).
4. **LOCAL COMMITMENT**. Upon receiving an updated estimate from MaineDOT, the Municipality shall provide MaineDOT's Project Manager with one of the following:
 - A. A statement acknowledging the estimate and affirming its commitment to the Project; or
 - B. A request to withdraw the Project and reimburse MaineDOT for all costs incurred.

5. **REIMBURSEMENT.** The Municipality shall submit to MaineDOT progress invoices, modeled after *Letter 4* from the LPA Manual, for reimbursement of participating costs incurred, as follows:
 - A. Each invoice shall include a progress report for the service period of the invoice.
 - B. Each invoice shall include enough backup to satisfy the MaineDOT Project Manager.
 - C. Each invoice shall show MaineDOT's and the Municipality's portions of Project costs, including a running total of costs invoiced to date.
 - D. The Municipality must certify that amounts claimed are correct and not claimed previously.
 - E. If the Municipality fails to submit invoices at least every **six months**, MaineDOT may hold the Municipality in default, as defined in the "Default and Termination" section of this Agreement.
 - F. Upon completion of the Project and payment in full of all contracted parties, the Municipality shall submit to MaineDOT a final invoice modeled after *Letter 20* from the LPA Manual. Payment of the invoice shall be contingent on a passing inspection of the Project by MaineDOT and receipt by MaineDOT of a completed Consultant Evaluation from the Municipality.
6. **TERM.** The Municipality shall complete the Project and submit a final invoice to MaineDOT by the Expiration Date at the top of this Agreement. The Municipality shall submit any request for an extension to MaineDOT in writing before this Expiration Date.
7. **MAINEDOT COSTS.** MaineDOT will charge to the Project costs incurred for services performed on the Project. The Municipality shall share in these costs commensurate with its share percentage of the Project. At a minimum, MaineDOT will reconcile these costs upon completion of the Project and deduct the Municipality's share percentage from the final invoice payment under section 5F above.
8. **REPAYMENT.** If the Municipality withdraws from the Project, the Municipality shall refund all progress payments from MaineDOT and reimburse MaineDOT for all costs incurred on the Project, within 30 days of receipt of an invoice from MaineDOT for the same.
9. **SET-OFF RIGHTS.** 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 any money due to the Municipality under a specific project contract up to any amounts owed to MaineDOT regarding this Agreement, and any other agreement/contract with any state department or agency, including any agreement/contract for a term commencing before the term of this Agreement. MaineDOT shall exercise its set-off rights in accordance with standard state practices including, in cases of set-off pursuant to an audit, the finalization of the audit. *MaineDOT reserves the right to withhold or reduce Local Road Assistance payments to the Municipality for purposes of set-off to recover any amount owed.*

PROJECT DEVELOPMENT

1. **KICKOFF.** The Parties shall hold a Project Kickoff meeting upon execution of this Agreement.
2. **PROGRESS UPDATES.** The Municipality shall provide MaineDOT with written progress updates upon request. If the Municipality fails to respond to repeated requests to provide such updates, MaineDOT reserves the right to declare the Municipality to be in default of this Agreement, as defined in the "Default and Termination" section of this Agreement.

3. HIRING CONSULTANTS. If the Municipality intends to hire a consultant using funds from MaineDOT, the Municipality shall use a qualifications-based selection in accordance with 23 CFR part 172 and Chapter 2 of the LPA Manual, "Hiring Consultants," as set out below.
 - A. Using price as a ranking factor shall make consultant work ineligible for reimbursement.
 - B. The Municipality shall obtain MaineDOT's written approval of any contract or contract modification. Work performed without such approval shall be ineligible for reimbursement.
 - C. Applicable provisions of MaineDOT's Consultant General Conditions shall govern such work.
 - D. The Municipality shall fill out a standard Consultant Evaluation Form upon completion of its contract with any consultant. A copy of the completed form shall be provided to MaineDOT.
4. SURVEY. MaineDOT will perform survey work on the state highway system that is necessary to develop an Existing Conditions Plan, including property delineation and determination of existing right of way.
5. RIGHT-OF-WAY. The Parties will coordinate acquisition of rights-of-way, as follows:
 - A. MaineDOT will lead the right-of-way process when the Project is on the state highway system.
 - B. The Municipality shall lead the right-of-way process when the Project is off the state highway system. In carrying out the right-of-way process, the Municipality shall:
 - i. Contract with an appraiser and a review appraiser listed on MaineDOT's Appraisal Register or otherwise approved by MaineDOT as qualified to perform the work;
 - ii. Abide by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the Uniform Act);
 - iii. Follow the standards set out in the MaineDOT *Right of Way Manual*; and
 - iv. Provide MaineDOT with a certification modeled after *Letter 14* from the LPA Manual.
 - C. MaineDOT will participate in eligible right-of-way costs up to the official Determination of Just Compensation. MaineDOT's participation in any administrative settlement amount exceeding the Determination of Just Compensation amount shall require MaineDOT's approval. If applicable, the Municipality shall be responsible for all court costs associated with appeals of unsettled parcels to Superior Court.
 - D. When a Project is located both on and off the state highway system:
 - i. The Parties shall have one certified appraiser complete the appraisals for all parcels.
 - ii. MaineDOT will acquire the necessary rights located on the state highway system.
 - iii. The Municipality shall acquire the necessary rights located off the highway state system.
 - iv. Negotiations with property owners will be conducted by MaineDOT and, when applicable, the Municipality's officials.
 - E. The Municipality shall dedicate to the Project any municipal property needed for the Project for public use into perpetuity.
6. DESIGN. The Municipality, in coordination with its contracted consultant if applicable, shall be responsible for preparing all design plans, specifications, estimates and contract documents for the Project, in accordance with all applicable engineering standards, laws and regulatory requirements.

- A. The Municipality shall submit the following to MaineDOT for review and comment:
 - i. Preliminary design report;
 - ii. Design plan impacts (if acquisition of rights-of-way will be required); and
 - iii. Final plans, specifications and estimate package (PS&E).
 - B. The bid documents for the Project shall reference MaineDOT's *Standard Specifications* and contain all applicable special provisions and federal requirements, as set out in Chapter 7 of the LPA Manual, "Final PS&E Package."
 - C. Electronic design files provided for the use of MaineDOT staff shall conform to MaineDOT's policy on electronic exchange of CADD data: <http://www.maine.gov/mdot/caddsupport/>
 - D. MaineDOT will enforce all laws, regulations, engineering standards and specifications that apply to the Project and will require changes if they are not met.
 - E. MaineDOT will give the Municipality written construction authorization once MaineDOT accepts the final PS&E package as complete. Receipt of such authorization shall not relieve the Municipality and its consultant, if applicable, of responsibility for meeting all engineering standards and regulatory requirements that apply to the Project.
7. **PUBLIC PARTICIPATION.** The Municipality shall hold a public participation process for the Project that is appropriate for the scope of work and acceptable to MaineDOT's Project Manager. The Municipality shall provide MaineDOT with a public process certification that is modeled after *Letter 10* from the LPA Manual, as part of the Project's environmental package.
 8. **NEPA PROCESS.** MaineDOT will lead the National Environmental Policy Act (NEPA) compliance process for the Project. The Municipality shall provide MaineDOT with signed *Letter 11* from the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.
 9. **PERMITS.** Upon obtaining all approvals, permits and licenses for the Project, the Municipality shall provide MaineDOT with a signed environmental certification modeled after *Letter 12* from the LPA Manual, as part of the final PS&E package for the Project.
 10. **UTILITY COORDINATION.** The Municipality shall identify all utilities affected by the Project and coordinate all required facility relocations. Upon completion of utility coordination, 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 for the Project.
 11. **FORCE ACCOUNT.** If the Municipality intends to construct the Project with municipal labor or materials, it shall obtain written authorization from MaineDOT to use a force-account process.
 12. **HIRING A CONSTRUCTION CONTRACTOR.** Unless MaineDOT approves otherwise in writing, the Municipality shall use competitive bidding to hire a construction contractor upon receiving written authorization from MaineDOT. The bid process shall follow the procedures in the latest edition of MaineDOT's *Standard Specifications*, Section 102, "Bidding." *Advertising without authorization from MaineDOT shall make the Project ineligible for federal funding.*

13. CONSTRUCTION CONTRACT 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.
14. CONSTRUCTION ADMINISTRATION. During construction, the Municipality shall:
 - A. 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.
 - B. Provide a Project Resident to document and inspect the work who is either a qualified municipal employee or a consultant hired through a qualifications-based selection method.
 - C. Provide a paving inspector and concrete technician with appropriate certifications to be on site for paving operations and concrete placements, as applicable.
 - D. Coordinate materials testing necessary to comply with the Minimum Testing Requirements that MaineDOT establishes for the Project, as follows:
 - i. An independent, accredited laboratory shall be used to test all aggregates;
 - ii. Concrete and hot-mix asphalt pavement shall be tested at the closest MaineDOT lab.
 - E. Submit proposed contract modifications to MaineDOT for review and concurrence. MaineDOT reserves the right to deny reimbursement to the Municipality for work performed under a modification executed without MaineDOT's concurrence.
 - F. Provide MaineDOT with revised as-built plans for the completed Project, if applicable.
15. FINAL INSPECTION. MaineDOT will inspect the completed Project for compliance with the design plans, specifications and provisions of the construction contract. MaineDOT reserves the right not to reimburse the Municipality for work determined to be out of such compliance.

MAINTENANCE

1. Any other provision of this Agreement to the contrary notwithstanding, the Municipality shall have maintenance responsibility for any portion of the Project inside an Urban Compact Area, in accordance with Maine law: Title 23 MRSA, §754, "Town maintenance in compact areas."
2. The Municipality shall maintain any sidewalk completed as part of the Project for the duration of its useful design life, as determined by generally accepted engineering standards. Maintenance shall consist of general upkeep and repairs necessary to preserve year-round public access, including for persons with disabilities, with only isolated or temporary interruptions in accessibility. This maintenance obligation shall include reasonable snow removal efforts, in accordance with the requirements of 23 USC §116 and 28 CFR §35.133.
3. The Municipality shall operate and maintain traffic signals installed on the Project under the terms of the appendix labeled, "Operation and Maintenance of Traffic Signals."
4. *This Maintenance section shall survive the expiration of this Agreement.*

PROJECT RECORDS

1. **PROJECT RECORDS.** Project Records, whether printed or electronic, shall include all plans, specifications, contracts, reports, notes, or other documents prepared by or for the Municipality (Project Records). 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 representatives of the Federal Government 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 comply with Title 2 of the Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
4. *This section shall survive the termination or expiration of this Agreement.*

GENERAL PROVISIONS

1. **GOVERNING LAW.** The Parties shall comply with 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), Title 23 in the United States Code for statutory law, and Title 23 in the Code of Federal Regulations (CFR) for administrative law.
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 herein shall waive any defense, immunity or limitation of liability available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law. *This 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, 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 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 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.

CONFLICTS OF INTEREST

1. No officer, employee or agent of the Municipality with a financial or other personal interest in any contract or subcontract for the Project shall participate in the selection, award or administration of any such contract or subcontract.
2. No professional performing services for the Municipality 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 Municipality. No officer or employee of any professional performing services for the Municipality on the Project shall have a financial or other personal interest in real property acquired for the Project, unless the interest is openly disclosed, and such officer or employee has not participated in acquisition for and on behalf of the Municipality.
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 real property acquired for the Project unless such real property interest is disclosed before the person or entity enters into the contract.

THIRD-PARTY CERTIFICATION

By signing this Agreement, the Municipality certifies that if it contracts with an entity, the Municipality shall require that entity and its principals 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 regarding 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 changed 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

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. 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

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

1. DEFAULT. MaineDOT reserves the right to send the Municipality a written Notice of Default if the Municipality commits any of the following:
 - A. Withdraws its support for the Project, resulting in cancellation of the Project;
 - B. Does not respond to repeated requests for progress updates from MaineDOT;

- C. Fails to put the project out to bid within 3 years of the execution date of this Agreement without receiving an extension in writing from MaineDOT;
 - D. Takes any action that makes the Project ineligible for federal funding;
 - E. Uses Project funds for a purpose not authorized by this Agreement;
 - F. Misrepresents or falsifies any claim for reimbursement;
 - G. 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 and MaineDOT’s internal costs for work on the terminated Project.
 - B. The Municipality shall forfeit all federal 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, at its sole discretion, may reimburse the Municipality for eligible work performed on the Project until the effective termination date. The Municipality’s share of MaineDOT’s internal costs for work on the Project shall be deducted from the final invoice amount owed to the Municipality.

AGREEMENT APPROVAL

The Municipality’s undersigned representative assures that the Municipality’s 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 duly authorized representatives of the Parties have executed this Agreement effective 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: _____

** Pursuant to 10 M.R.S.A. §9502, et seq., I certify that the foregoing electronic signature: (a) is intended to have the same force as my manual signature, (b) is unique to myself, (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

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[®] number on file with the Central Contractor Registration (CCR):

| | |
|--------------------------------|--------------------------|
| <u>City of Portland, Maine</u> | <u>07-174-7802</u> |
| Sign and Print Legal CCR Name | DUNS [®] Number |

Authorized Representative: _____
Jon P. Jennings, City Manager

U.S. Department of Transportation (USDOT)

Federal Highway Administration – Standard Title VI / Nondiscrimination Assurances

DOT Order No. 1050.2A

The **City of Portland** (the Recipient) **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (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 regarding 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 in 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

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 act 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

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.).