

Order 178-15/16

Passage: 7-0 (Thibodeau, Costa absent) on 3/21/2016

Effective 3/31/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER APPROVING THREE-PARTY AGREEMENT
BETWEEN THE CITY OF PORTLAND, THE MAINE DEPARTMENT OF
TRANSPORTATION AND PORTLAND AREA COMPREHENSIVE
TRANSPORTATION SYSTEM
RE: DANFORTH STREET**

ORDERED, that the City Manager is authorized to enter into the three-party partnership agreement between the City of Portland, the Maine Department of Transportation and the Portland Area Comprehensive Transportation System, in substantially the form attached, for work on Danforth Street:

- PSN 65828: Danforth Shim and 3/4-inch Overlay Portland; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to sign the three-party agreement and any other documents necessary to effect the purpose of this order.

CT#: _____

CSN: _____

TEDOCS #: _____

PROGRAM: _____



**MAINE DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT
PSN 65828: Danforth Street Shim & 3/4" Overlay
Portland**

This agreement (“**Agreement**”) is entered into by the State of Maine Department of Transportation (“**MaineDOT**”), the Municipality of Portland (the “**Municipality**”), and the Portland Area Comprehensive Transportation System (PACTS), the designated Metropolitan Planning Organization for the Portland Area Urbanized Area (“**MPO**”), jointly hereinafter referred to as the “**Parties**”.

Whereas, the project that is the subject of this Agreement consists of Danforth Street Shim and 3/4" Overlay from York Street to High Street (hereafter referred to as the “**Project**”); and

Whereas, the MPO has programmed the Project for inclusion in the MaineDOT Annual Capital Work Plan for 2016-2018, using Federal and State capital improvement funding allocated by MaineDOT; and

Whereas, the Municipality supports the decision by the MPO to program the Project; and

Whereas, the Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the budget programmed, using a process that maximizes communication and cooperation; and

Whereas, the MPO cannot commit federal transportation funding without a formal adoption of a Transportation Improvement Program (“**TIP**”) or TIP amendment including all required public involvement processes, this Agreement does not constitute a commitment of federal funding under Title 23 Part 630.

Whereas, the purpose of this Agreement is to identify the Parties’ individual responsibilities during the design, permitting and right-of-way phases of the Project through completion of final Plans, Specifications and Estimate (“**PS&E**”), and to identify the intended financial allocations between the Parties through all phases of the Project if and when the parties formally approve and commit financial resources for the Project.

Whereas, following the preparation of the project PS&E, a separate Municipal/State Agreement will be executed by MaineDOT and the Municipality.

NOW THEREFORE, in consideration of the forgoing, the Parties hereby establish and agree to the following terms and conditions:

1. The total estimated cost of the Project through all phases is \$248,413 (the “Project Estimate”), and the Parties agree to allocate the associated costs of each phase as outlined in this section:

Work Phase	MPO (Federal) Maximum Share	MPO (State) Share	Municipal Share		Total Estimated Cost
			Amount	%	
Preliminary Engineering	\$7,452.39	\$0.00	\$2,484.13	25%	\$9,936.52
Right of Way	\$1,500.00	\$0.00	\$500.00	25%	\$2,000.00
Construction	\$155,000.19	\$0.00	\$51,666.73	25%	\$206,666.92
Construction Engineering	\$22,357.17	\$0.00	\$7,452.39	25%	\$29,809.56
TOTAL SHARE	\$186,309.75	\$0.00	\$62,103.25	25%	\$248,413.00

- a. Estimated allocations are further identified as follows:
- i. **Federal share** – federally participating costs are 75.0% of actual Project cost up to a maximum of \$186,309.75.
 - ii. **State share** – state participating costs are 0.0% of actual Project cost up to a maximum of \$0.00.
 - iii. **Municipal share** – the Municipality’s share is 25% of the actual Project costs. Local Share is estimated at \$62103.25, plus 100% of any additional costs incurred in accordance with Section 1.b. below.
- b. The Municipality shall be fully responsible for any and all Project costs exceeding \$248,413.00, unless otherwise agreed to in writing by the Parties through a modification to this Agreement.
- c. If the actual Project cost is less than the Project Estimate the amounts owed will be adjusted according to the percentages.
- d. If the Project Estimate or associated financial allocations are adjusted to reflect updated costs, MaineDOT will consult with the MPO and the Municipality before such adjustments are approved and implemented.
2. MaineDOT will share information about the status of the Project with staff from the MPO and the Municipality at the following milestones:
- Project kickoff/initial team meeting/formal public contact.
 - Completion of the preliminary design report (PDR).
 - Formal public meeting.
 - Completion of the plans, specifications and estimate (PS&E.)
 - Changes in the Project Schedule or Engineer’s Estimate.
3. MaineDOT will develop construction plans and specifications for the Project within the scope described above, using MaineDOT’s standard project development process to ensure adherence to federal and state regulations.

4. After the final PS&E package is prepared, MaineDOT and the Municipality will execute a Municipal/State Project Agreement covering Project advertisement, award, construction and construction engineering. Said Municipal/State Agreement will carry the financial terms outlined in Section 1 above, as well as a schedule for collection of the Municipality's share of Project costs. Generally, Municipality payments for 100% of its share of the Preliminary Engineering and Right of Way costs, 50% of its share of Construction and Construction Engineering costs and 100% of all additional work requested by the Municipality are due prior to award of the contract for Project construction. The remainder of the payments to be made by the Municipality will be defined in the Municipal/State Project Agreement.
5. MaineDOT will consult with the MPO and the Municipality before implementing any adjustments to the Project scope, and the MPO and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.
6. The Parties will participate as partners in any public meetings held to discuss the Project.
7. If MaineDOT withdraws from the Project before it has been advertised for construction, and that action was not directed by the MPO and the Municipality, MaineDOT will be responsible for all Project costs incurred to date.
8. If the Municipality withdraws its financial support for the Project as described in Section 1 above, leading MaineDOT to cancel the Project before it has been advertised for construction, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality's commitment documented in this Agreement, including, but not limited to, reimbursement of all federal funds expended to date.
9. Anything herein to the contrary notwithstanding, the Municipality and the MPO acknowledge 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 its federal partners and the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of the Department in excess of such appropriations.
10. The Municipality represents that its governing body has taken all steps necessary and lawful to approve the Project and the Municipality's entry into this Agreement, has appropriated or authorized the use of any necessary funds in connection with the Municipality's participation, and has further authorized the undersigned Municipal representative to execute this Agreement on the Municipality's behalf.
11. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off 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, any other Agreement/Contract with any State 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 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.

12. All provisions of this Agreement shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

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

 _____ Date 2/4/16

John Duncan, Director |
MPO for PACTS

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.

_____ Date _____

TYPE NAME, TITLE HERE |

Municipality of Portland

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.

_____ Date _____

William A. Pulver, Director, Bureau of Project Development
Maine Department of Transportation

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.



Project Identification Form MPO Project

Section 1 – Project Origination

Sponsoring metropolitan planning organization (MPO): PACTS

Section 2 – Project Description and Justification

Project Sequence Number (PSN): 65828

Project Identification Number (PIN):

Municipality: Portland

Route Number/Street Name: Danforth Street

Description of Project Location: York Street to High Street, 0.21 miles.

Federal Functional Classification:
Minor Collector

Is the project on the NHS?
No

Speed Limit (mph): 25

AADT (segment):

Total Entering AADT:

Potential locally administered project?
 Yes No

Please state the purpose and need, describing why the improvement is proposed: Current PACTS policy is to both preserve and improve the collector roads in the PACTS region implementing cost effective infrastructure management.

Please describe the proposed scope of work: Shim and ¼ inch overlay.

Section 3 – Municipal Involvement

Please provide the following information about the sponsoring municipality:

Municipality Represented: Portland		
Contact Name: Kathl Earley		Title: Engineering Manager
Mailing Address: 55 Portland Street	City: Portland	Zip Code: 04101
Daytime Phone Number: 874-8830	E-mail Address: KAS@portlandmaine.gov	

Section 4 – MPO Project Contact

MPO contact for this project:

Paul Niehoff

Phone number:

207-774-9891

Form completed by:

Paul Niehoff

Date:

Revised: 11-19-15

Section 5 – Other Project Considerations

<p>Has this project been reviewed in conjunction with other projects in the area, either under design or construction? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, please identify the person who conducted the review and specify the projects:</p>
<p>Has this project been reviewed for pedestrian/bicycle accommodations and ADA requirements, including sidewalks and sidewalk ramps? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, by whom?</p> <p>Comments:</p>
<p>Has the project been reviewed for crash history or other safety concerns? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, by whom?</p>
<p>Has this project been reviewed for potential environmental impacts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, by whom?</p>
<p>Has this project been reviewed for traffic data needs, including turning movement counts? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, please identify the person who did the review and provide this data to the MaineDOT MPO Coordinator.</p>
<p>Are there existing maintenance problems – drainage, pavement flooding, scouring – that should be addressed as part of this project? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p>If yes, please describe:</p>
<p>Are there related intersections that should be evaluated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, please list:</p>
<p>For intersection improvements that call for new signals where none currently exist, has a warrant analysis been completed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p>
<p>Will the project change the road's horizontal or vertical alignment? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, please describe:</p>
<p>Are there any obvious right-of-way impacts or displacements? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, please identify the source of the review and briefly explain the impacts:</p>
<p>Are there utility impacts within the proposed project limits? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, please describe the utility impacts: Typical utility adjustments as included with most overlay projects.</p>

Can this project meet clear zone requirements? (Please consult the *MaineDOT Highway Design Guide* for guidance.) Yes No N/A

If no, please explain:

Do you expect that the project will require design exceptions (vertical and horizontal alignment, shoulder/lane widths, and clear zones)? Yes No N/A

If yes, please explain:

Have previous technical studies been conducted? Yes No N/A

If yes, please: 1.) check all that apply; 2.) identify the responsible firm(s); and 3.) provide a copy to MaineDOT.

Planning and Feasibility Corridor Report Geotechnical Hydraulic Environmental

Responsible firm(s)

Is professionally stamped technical documentation attached? Yes No If no, please explain: Not needed.

Section 6 – Estimated Costs by Phase and Scheduling

Phase	Original Estimate	Requested Delivery Year
<input checked="" type="checkbox"/> Preliminary Engineering	\$ 9,936	2016
<input checked="" type="checkbox"/> Right-of-Way	\$ 2,000	2016
<input checked="" type="checkbox"/> Construction	\$ 206,667	2016
<input checked="" type="checkbox"/> Construction Engineering	\$ 29,810	2016
Total Cost	\$ 248,413	

Source of the estimate and contact information, for follow-up: G-P& DOT

Is the project intended to be advertised for construction in 2016-2017? Yes No N/A

If no, please explain:

Section 7 – Funding Sources for the Project

Funding Source	Amount	%
<input checked="" type="checkbox"/> Federal	\$ 186,310	75
<input type="checkbox"/> State	\$ 0	
<input checked="" type="checkbox"/> Local/Other	\$ 62,103	25
Total Project Funding	\$ 248,413	100

Section 8 – Project Approvals

In signing this form below, I concur with the proposed scope of work, schedule and cost estimate. Additionally, I acknowledge that the MPO will provide Federal and State funding for the project, shown in Section 7. My signature further indicates that the MPO is willing to enter into a Three-Party Agreement with MaineDOT and the Municipality – formally defining the scope and assigning responsibility for costs – before design begins.

Comments:

Paul Niehoff

11/19/15

Name and Title: Paul Niehoff, Senior Transportation Planner
MPO PACTS

Date

In signing this form below, I concur with the proposed scope of work, schedule and cost estimate. Additionally, I acknowledge that the Municipality will make a commitment to secure its local share of project costs, shown in Section 7. My signature further indicates that the Municipality is willing to enter into a Three-Party Agreement with MaineDOT and the MPO – formally defining the scope and assigning responsibility for costs – before design begins.

Comments:

J.P. J... City Manager

11/30/15

Name and Title:
Municipality

Date

In signing this form below, I acknowledge that I have reviewed the proposed scope, schedule and cost estimate.

I further state that I agree with the following: Scope Schedule Cost estimate

I further state that I disagree with the following: Scope Schedule Cost estimate

Comments:

Gerry Audibert

11/30/15

Name and Title: Gerry Audibert, MPO Engineer
Maine Department of Transportation

Date

NOTES

1. The municipality attests that it will abide by all federal and state requirements.
2. Any project costs found to be ineligible for federal and/or State participation shall be borne by the municipality and/or MPO.
3. Cancellation of a project may result in any expenditures to be determined to be ineligible and therefore borne entirely by the municipality and/or MPO, unless otherwise mutually agreed to by MaineDOT.

Project Title ID 163151

PACTS Danforth St Paving

Public Services

Division Engineering

Classification Streets/Sidewalks

Project Description

FY ~~18~~¹⁷ "Other Funding" = PACTS 16-17 TIP award of 248,413.

PACTS Collector Paving Program awarded Danforth St paving between York and High St. CIP request is for the required 25% Local Match plus ancillary City costs, including Sewer & Signal utilities. Work Plan Indicates ~~2018~~ construction.

2016

Project Justification

Highly leveraged value of Federally funded Pavement Rehabilitation projects; Local Match = 25% and City must cover 100% of sewer utility and ineligible items.

5 Year Cost Summary

<u>Planning</u>	<u>Land</u>	<u>Construction</u>	<u>Equipment</u>	<u>Est Total Cost</u>
\$10,000		\$313,413		\$323,413

Funding Source

<u>Year</u>	<u>Other Funding</u>	<u>Requested Funding</u>	<u>City Mgr Recommended</u>	<u>Funding Type</u>	<u>Approved</u>
2016					<input type="checkbox"/>
2017					<input type="checkbox"/>
2018	\$248,413	\$75,000			<input type="checkbox"/>
2019					<input type="checkbox"/>
2020					<input type="checkbox"/>
Total	\$248,413	\$75,000			

Other Funding Source Description

PACTS 16-17 TIP award; Work Plan Indicates ~~2018~~ construction.

2016

Operating Budget Impact

Reduces cost to City for pothole repair and leverages critical infrastructure maintainance.