

Order 152-17/18

Passage: 9-0 on 2/21/2018

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 3/3/2018

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

**ORDER APPROVING THE AGREEMENT BETWEEN PORTLAND, PORTLAND
AREA COMPREHENSIVE TRANSPORTATION SYSTEM
AND MAINE DEPARTMENT OF TRANSPORTATION
RE: PAVING CUMBERLAND AVENUE FROM ELM STREET TO STATE STREET**

ORDERED, that the Agreement between the City of Portland, Portland Area Comprehensive Transportation System and the Maine Department of Transportation for pavement preservation on Cumberland Avenue from Elm Street to State Street, with the MDOT identification number of 022164.00, is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.



<i>MaineDOT use only</i>	
TEDOCS #:	_____
CTM #:	_____
CSN #:	_____
PROGRAM:	<u>Bureau of Planning</u> _____

State of Maine
DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT

Portland, Maine
Cumberland Avenue Pavement Preservation

<i>MaineDOT Use Only</i>	
WIN #: <u>022164.00</u>	Agreement Maximum Amount: <u>\$397,100.00</u>
N/M MPO Id#: <u>PACTS</u>	Agreement Begin Date: _____ (<i>Office Use Only</i>)
Municipality Id#: <u>PORTLAND</u>	Agreement End Date: <u>(3 years from date last signed)</u>

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

Whereas, the work that is the subject of this Agreement consists of a mill and fill on Cumberland Avenue beginning at State Street and extending north 0.46 of a mile to Elm Street (the “**Project**”); and

Whereas, PACTS has programmed the Project for inclusion in the 2017-2018-2019 MaineDOT Work Plan, using Federal capital improvement funding allocated by MaineDOT; and

Whereas, the Municipality supports the decision by PACTS 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 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; and

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:

A. Financial Provisions:

1. The total estimated cost of the Project through all phases is \$397,100.00 (the “**Project Estimate**”), and the Parties agree to share in and allocate the associated costs of each phase as outlined in this section:

Work Phase	Estimated Federal Share	Estimated State Share	Estimated Municipal Share	Estimated Total Cost
Preliminary Engineering	\$ 14,891.25	\$ -	\$ 4,963.75	\$ 19,855.00
Right of Way	\$ 375.00	\$ -	\$ 125.00	\$ 500.00
Construction	\$ 252,776.25	\$ -	\$ 84,258.75	\$ 337,035.00
Construction Engineering	\$ 29,782.50	\$ -	\$ 9,927.50	\$ 39,710.00
Total Project Share	\$ 297,825.00	\$ -	\$ 99,275.00	\$ 397,100.00

2. Estimated allocations are further identified as follows:
 - a. **Federal share** (provided through PACTS Federal Allocation) - 75% of federally participating costs, up to a maximum of \$297,825.00.
 - b. **State share** (provided through PACTS State Allocation) - 0% of federally participating costs, up to a maximum of \$0.00.
 - c. **Municipal share** (provided through the Municipality’s obligation of funds) - 25% federally participating costs, which is estimated at \$99,275.00, plus 100% of any additional costs incurred in accordance with Section A.3.
3. The Municipality shall be fully responsible for any and all Project costs exceeding \$397,100.00, unless otherwise agreed to in writing by the Parties through a modification to this Agreement.
4. If the actual Project cost is less than the Project Estimate the amounts owed will be adjusted according to the percentages.
5. If the Project Estimate or associated financial allocations are adjusted to reflect updated costs, MaineDOT will consult with PACTS and the Municipality before such adjustments are approved and implemented.

B. MaineDOT Agrees:

1. To prepare, or cause to be prepared, 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.
2. To share information about the status of the Project with staff from PACTS and the Municipality 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.
- Plan Impacts Complete (“PIC”).
- PS&E complete.
- Changes in the Project Schedule or Engineer’s Estimate.

C. Miscellaneous Provisions:

1. 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 the Financial Provisions section of this Agreement, as well as a schedule for collection of the Municipality’s share of Project costs.
2. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project scope, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.
3. The Parties will participate as partners in any public meetings held to discuss the Project.
4. If MaineDOT withdraws from the Project before it has been advertised for construction, and that action was not directed by PACTS and the Municipality, MaineDOT will be responsible for all Project costs incurred to date.
5. If the Municipality withdraws its financial support for the Project as described in the Financial Provisions section of this Agreement, 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 commitment documented in this Agreement, including, but not limited to, reimbursement of all federal funds expended to date.
6. Anything herein to the contrary notwithstanding, the Municipality and PACTS 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 MaineDOT in excess of such appropriations.
7. 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.

8. 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.

9. To the extent permitted by law, the Municipality and PACTS shall indemnify and hold harmless MaineDOT, its agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its 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 any termination or expiration of this Agreement.***

10. With the exceptions of the provisions so noted, 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.

John Duncan Date 5/30/17
 John Duncan, Director
 Portland Area Comprehensive Transportation System

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 _____
 Jon Jennings, City Manager
 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 _____
 Herb Thomson, Director, Bureau of Planning
 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.