

Order 145-16/17

Passage: 9-0 on 3/6/2017

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 3/16/2017

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

**ORDER APPROVING AGREEMENT BETWEEN PORTLAND AND MAINE  
DEPARTMENT OF TRANSPORTATION  
RE: WEST COMMERCIAL STREET TRAIL**

**ORDERED**, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for construction of the West Commercial Street Trail, WIN 18865.00, 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.

**MEMORANDUM**  
**City Council Agenda Item**

**TO:** Mayor and City Council

**FROM:** Jeff Levine, Director, Planning and Urban Development Department

**DATE:** 1/23/17

**DISTRIBUTION:** Jon Jennings, City Manager; Mayor Ethan Strimling; Anita LaChance, Assistant City Manager; Danielle West-Chuhta, Corporation Counsel; Victoria Morales, Associate Corporation Counsel; Sonia Bean, Nancy English and Julie Sullivan

**SUBJECT:** Request to Authorize Municipal-State Agreement with MaineDOT for design and construction of West Commercial Street Trail

**SPONSOR:** Jeff Levine, Director, Planning and Urban Development Department

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading** \_\_\_\_\_ 2/6/17 \_\_\_\_\_ **Final Action** \_\_\_ 2/20/17 \_\_\_\_\_

**Can action be taken at a later date:**  **Yes**       **No (If no why not?)**

**I. SUMMARY OF ISSUE (Agenda Description)**

In 2012, the Maine DOT awarded Transportation Enhancements funding to the City of Portland's Department of Public Works for the design and construction of a portion of the West Commercial Street Trail. The shared use pathway segment, from the Star Match Building west to the Fore River Trail, is a vital link in plans to create a circumferential shared use pathway network around the Portland Peninsula, and the planning work that preceded the application had begun two years earlier, with the *West Commercial Street Trail Feasibility Study*. The city reaffirmed its commitment to completing the pathway segment, within the scope of the broader bicycle and trail planning for the peninsula, in the 2014 *West Commercial Street Multi-Modal Corridor Study*, which placed the pathway first on its list of priority recommendations. In June 2013, the City Council unanimously endorsed the funding of this project as part of the 2014 CIP. (See Order #232-12/13). In 2016, the city agreed to oversee the pathway design and construction as a locally-administered project, and the city's Department of Planning and Urban Development was selected to manage the project.

**II. REASON FOR SUBMISSION**

Council action is required to authorize the City Manager's signature on the Municipal-State Agreement.

**III. INTENDED RESULT**

The Municipal-State Agreement formally commits both the city and MaineDOT to the West Commercial Street Trail project, with a 20%/80% split through the Transportation Enhancements program. The commitment will allow the city to leverage significant state and federal funds to make vital transportation improvements to West Commercial Street.

**IV. COUNCIL GOAL ADDRESSED**

Transportation Initiatives: Develop a transportation system that advances healthy living, minimizes environmental impacts and promotes the local economy by advancing opportunities for mass transit, bicycle use, and walking.

**V. FINANCIAL IMPACT**

Total Agreement Amount: \$353,488.00

Federal Share: \$282,790.40 (80%)

Municipal Share: \$ 70,697.60 (20%)

The local share for the West Commercial Street Pathway project is \$70,698. \$70,000 of this match is currently programmed in the city's CIP (Project ID# C14P01). Remaining funds are anticipated to come from the MDOT Quality Community Program account (C14114).

**VI. STAFF ANALYSIS AND RECOMMENDATION**

Following review by Corporation Counsel, DPW, and Planning staff, Planning staff recommends approval of this agreement between Maine DOT and the City of Portland and authorization of the City Manager's signature.

**VII. ATTACHMENTS**

1. MaineDOT Agreement for a Federal-aid Locally Administered Project, West Commercial Street Trail: WIN 018865.00

Prepared by: Nell Donaldson

Date: 1/23/16

Bean/agendarequestmemo/rev 11/2015



STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0016

Paul R. LePage  
GOVERNOR

David Bernhardt  
COMMISSIONER

January 3, 2017

Helen Donaldson, Senior Planner  
City of Portland Planning Division  
389 Congress Street  
Portland, ME 04101

**Subject:** Revised Agreement for West Commercial Street Trail, WIN 018865.00

Dear Ms. Donaldson:

Enclosed is the revised agreement between MaineDOT and the City of Portland for a locally administered project to design and construct a multi-use path along West Commercial Street, with federal funding. As you pointed out - and Patrick Adams, the MaineDOT bicycle and pedestrian program coordinator - clarified, the project description on the first page has been revised to include the existing sidewalk in front of the Portland Match Company building.

Once the agreement is approved, signed and dated by your City Manager, please return it as follows:

- Email a color, high-quality .pdf scan to me at [michael.laberge@maine.gov](mailto:michael.laberge@maine.gov); or
- Return the signed original to me by mail at the address below:  
Michael Laberge, Local Projects Coordinator  
Multimodal Program, Bureau of Project Development  
16 State House Station  
Augusta, ME 04333-0016

MaineDOT looks forward to receiving the signed and dated agreement back at the City's convenience.

Sincerely,

Michael Laberge  
Local Projects Coordinator



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

**Agreement for a Federal-aid Locally Administered Project**  
 With the  
**City of Portland**  
 Regarding  
**West Commercial Street Trail: WIN 018865.00**

Total Agreement Amount: <u>\$353,488</u>	Federal Project #: <u>TAP-1886(500)</u>
Federal Share: <u>\$282,790.40 (80%)</u>	Federal Authorization Date: <u>February 27, 2015</u>
Municipal Share: <u>\$70,697.60 (20%)</u>	City's Vendor ID: <u>VC1000073476</u>
Begin Date: <u>Upon MaineDOT's Signature</u>	City's DUNS® Number: <u>07-174-7802</u>
End Date: <u>Refer to Article 9, "Expiration."</u>	CFDA #20.205: <u>Highway Planning &amp; Construction</u>

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

WHEREAS, this Agreement shall apply to preliminary engineering, right-of-way, construction, and construction engineering work for a multi-use path along West Commercial Street, beginning at an existing sidewalk at the eastern entrance to the Portland Match Company building and continuing 0.41 mile to the end of the Fore River Parkway Trail (the "**Project**.")

WHEREAS, **MaineDOT** selected the **Project** for federal-aid funding and for inclusion in its Work Plan for calendar years 2016-2018; and

WHEREAS, the **City**, as a sub-recipient of federal-aid funding, shall deliver the **Project** as a Locally Administered Project, subject to oversight by **MaineDOT** to ensure that all federal and state requirements are met.

NOW, THEREFORE, in consideration of the foregoing statements, the **Parties** agree to the following terms and conditions:

The following attachments are hereby incorporated into this Agreement:

- Federal Funding Accountability and Transparency Act Form (signature required);
- Federal Title VI Assurances (signature required).

**ARTICLE 1. ROLES AND RESPONSIBILITIES**

1A. **ROLE OF CITY.** The **City** shall assign a full-time employee with appropriate qualifications and current Local Project Administration ("LPA") certification from **MaineDOT** to manage the **Project** and carry out the **City's** responsibilities under this Agreement. This Local Project Administrator shall abide by the guidance in the latest edition of **MaineDOT's Local Project Administration Manual & Reference Guide** ("LPA Manual.") If the certified administrator leaves the employment of the **City** or ceases to oversee the **Project**, the **City** shall stop work and notify the **MaineDOT** Project Manager. **MaineDOT** will determine a course of action.

- ❑ Local Project Administrator for **City**: Helen Donaldson, Senior Planner  
Email: hcd@portlandmaine.gov  
Phone: (207) 874-8723

1B. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to carry out the State of Maine’s responsibilities under this Agreement. This person will have the authority to request design changes to meet applicable laws and design standards; accept and reject invoices; review construction activities to ensure compliance with Agreement documents; and take all other action to ensure proper performance of this Agreement.

- ❑ Project Manager for **MaineDOT**: Brian Keezer, Senior Project Manager  
Email: brian.keezer@maine.gov  
Phone: (207) 624-3612

## ARTICLE 2. FINANCIAL PROVISIONS

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2A. **UPSET LIMIT.** The estimated cost of the **Project** is **\$353,488** (“Upset Limit.”) **Project** costs eligible for federal financial participation shall not exceed this Upset Limit without **MaineDOT**’s written approval, through an executed modification to this Agreement.

2B. **MAINEDOT SHARE.** **MaineDOT**, with funding from the Federal Highway Administration (“**FHWA**,”) will share in all **Project** costs eligible for federal financial participation at the rate of **80%**, up to a maximum contribution at this rate of **\$282,790.40**.

2C. **LOCAL SHARE.** The **City** shall share in all costs eligible for federal financial participation at the rate of **20%**, or an estimated **\$70,697.60**. Additionally, the **City** shall be fully responsible for costs:

1. Exceeding the Upset limit of this Agreement set forth in Article 2A above;
2. Incurred before the date of notice to proceed, as set forth in Article 3A, “Authorization”;
3. Deemed ineligible for federal financial participation.

2D. **MAINEDOT COSTS.** Costs that **MaineDOT** incurs for services performed for the **Project** shall be charged to the **Project**. The **City** shall share in these costs at the rate in Article 2C, “Local Share.” **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the **City**’s share of them from the final invoice payment.

2E. **INVOICING.** **MaineDOT** will reimburse the **City** for eligible costs incurred on the **Project** at the rate in Article 2B, “MaineDOT Share.” The **City** shall submit invoices in the format provided in Communication 4 from the LPA Manual, as follows:

1. Invoices shall be submitted no more than monthly and no less than quarterly.
2. Each invoice shall document the charges incurred and proof of payment made.
3. Each invoice shall include a progress report for the service period of the invoice.
4. Each invoice shall show **MaineDOT**’s and the **City**’s portions of **Project** costs, including a running total of costs incurred to date.
5. The **City** must certify that amounts are correct and not claimed previously.
6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.

- 2F. FINAL COST. If the actual cost of the **Project** is less than the Upset Limit, the final amounts owed will be adjusted based on the percentages in articles 2B and 2C.
- 2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to cancellation of the **Project** and the loss of federal financial participation, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** in full for the cost of services performed in connection with the **Project**. Additionally, **MaineDOT** will seek to recover from the **City** any payment made to the **City** for work later deemed ineligible for federal funding under this Agreement.
- 2H. 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, **MaineDOT**'s option to withhold for the purposes of set-off money due the **City** under a specific contract up to any amounts due and owed to **MaineDOT** with regard to this Agreement any other agreement with **MaineDOT**; money due the **City** any other agreement with any department or agency of the State of Maine, including any agreement for a term commencing before the term of this Agreement; and any amounts due and owed to the State for any reason including, but not limited to, tax delinquencies, fee delinquencies or monetary penalties relative thereto. **MaineDOT** shall exercise its set-off rights in accordance with standard practices of the State including, in cases of set-off pursuant to an audit, the finalization of such audit by **MaineDOT**, its representatives, or the State Controller.
- 2I. NON-APPROPRIATION. By law, all financial obligations assigned to **MaineDOT** in this Agreement are subject to budgetary appropriations. The **City** therefore acknowledges and agrees that if **MaineDOT** receives insufficient resources to support this **Project**, if funds programmed for this **Project** are de-appropriated, or if **MaineDOT** does not receive the legal authority to spend money otherwise programmed for this **Project**, **MaineDOT** shall be released from its obligation to make payment under this Agreement.

### ARTICLE 3. PROJECT DEVELOPMENT

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- 3A. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting reimbursable work or executing any service contract under this Agreement. This notice shall be contingent upon **MaineDOT** receiving authorization for the **Project** from the **FHWA** and executing this Agreement.
- 3B. KICKOFF. The **Parties** shall hold a project kickoff to go over the scope of work, schedule, estimated cost, and legal requirements before reimbursable work may begin.
- 3C. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with progress reports at intervals established by **MaineDOT**'s Project Manager.
- 3D. CORRESPONDENCE. The **City** shall correspond with **MaineDOT** using Communication 1 through Communication 20 from the LPA Manual.
- 3E. CONSULTANT WORK. If the **City** intends to contract for consultant services under this Agreement, the **City** shall use a qualifications-based selection method in compliance with the regulations found in 23 CFR Part 172, "Procurement, Management, and Administration of Engineering and Design Related Services," and the guidance found in Section 2 of the LPA Manual, "Consultant Selection." The **City** agrees that:

1. Using price as a ranking factor in the selection of a consultant will render consultant work ineligible for reimbursement from **MaineDOT**.
  2. The **City** shall obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
  3. The **City** shall include the provisions of the *Consultant General Conditions* in all contracts and insert Form FHWA-1273 into all contracts.
  4. The **City** shall obtain **MaineDOT**'s written approval before modifying a contract. Work performed on a contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
  5. The **City** shall evaluate the performance of a consultant upon completion of its contract with the consultant. A copy of the evaluation shall be provided to **MaineDOT**.
- 3F. DESIGN. The **City**, or its contracted consultant, shall prepare design plans, specifications, estimates and contract documents for the **Project**, in accordance with the appropriate reference publications, including but not limited to **MaineDOT**'s *Engineering Instructions*, *Highway Design Guide*, *Standard Specifications* and *Standard Details*, as well as the federal *Manual on Uniform Traffic Control Devices for Streets and Highways*. The design of the **Project** shall comply with the Americans with Disabilities Act (ADA).
1. The **City**, or its contacted consultant, shall submit a preliminary design report, design plan impacts, and the final plans, specifications and estimate package (PS&E) to **MaineDOT** for review and acceptance.
  2. The **City** shall ensure that the contract book for the **Project** references **MaineDOT**'s *Standard Specifications* and contains the following documents:
    - a. "Buy America" requirements;
    - b. Davis-Bacon prevailing wage rates;
    - c. Form FHWA-1273; and
    - d. Title VI Assurances.
  3. The **City**, or its consultant, shall address to **MaineDOT**'s satisfaction all changes requested or concerns expressed by **MaineDOT** before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising the **Project** without written authorization from **MaineDOT** shall render the entire **Project** *ineligible* for federal-aid funding.
  4. **MaineDOT**'s acceptance of the final PS&E package shall not relieve the Engineer of Record of responsibility for the quality of the engineering work for the **Project**.
- 3G. SURVEY. **MaineDOT** will perform all survey work if the **Project** is located on a state highway. Alternatively, the **City** may hire a surveyor pre-qualified by **MaineDOT** using one of the selection methods in Section 2 of the LPA Manual, "Consultant Selection."
- 3H. PUBLIC PARTICIPATION. The **City** shall give the public and all abutters the opportunity to learn about and comment on the **Project**, using a public process appropriate for the scope of work and acceptable to **MaineDOT**'s Project Manager. The **City** shall provide **MaineDOT** with a public process certification, in the format provided in Communication 10 from the LPA Manual, as part of the **Project**'s environmental package.

- 3I. ENVIRONMENTAL REVIEW. **MaineDOT** will prepare and submit to the FHWA all documentation required under the National Environmental Policy Act (“NEPA”). The **City** shall provide **MaineDOT** with signed Communication 11 from the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.
- 3J. PERMITS. The **City** shall obtain all approvals, permits and licenses required to carry out the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format of Communication 12 from the LPA Manual, as part of the final PS&E package for the **Project**.
- 3K. UTILITIES. The **City** shall coordinate the **Project** with any affected utility or railroad. The **City** shall provide **MaineDOT** with a utility certification in the format of Communication 13 from the LPA Manual, as part of the final PS&E package. MaineDOT’s Utility Accommodation Rules (2014) shall apply to utility relocations.
- 3L. RIGHT OF WAY. The **Parties** will coordinate acquisition of right-of-way as follows:
1. **MaineDOT** will carry out the right-of-way process for sections of the **Project** located on a state highway, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act.”)
  2. The **City** shall carry out the right-of-way process for sections of the **Project** located off of the state highway system. In doing so, the **City** shall:
    - a. Follow the Uniform Act and the regulations found in 49 CFR, Part 24.
    - b. Use the federally approved MaineDOT “Right of Way Manual.”
    - c. Provide a right-of-way map showing all rights obtained for the **Project**.
    - d. Provide **MaineDOT** with a signed right-of-way certification in the format of Communication 14 from the LPA Manual, as part of the final PS&E package.
  3. The **City** shall dedicate permanently to the **Project** for public use any municipal property needed for the **Project**.
- 3M. ADVERTISE. Upon receiving written authorization from **MaineDOT**, the **City** shall use competitive bidding to hire a construction contractor, as follows:
1. The **City** shall follow the procedures in MaineDOT’s *Standard Specifications* (November 2014 Edition), Section 102, “Bidding.”
  2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain written approval from **MaineDOT** before awarding a contract.
- 3N. AWARD. Upon receiving written approval from **MaineDOT**, the **City** shall award a contract to the lowest responsive and responsible bidder in accordance with MaineDOT’s *Standard Specifications* (November 2014 Edition), Section 103, “Award and Contracting.” The **City** shall administer the contract for the duration of the **Project**.
- 3O. CONSTRUCTION. During construction of the **Project**, the **City** shall:

1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method.
  2. Hold a pre-construction / pre-utility meeting with **MaineDOT**, the contractor, utilities and any other parties involved in the construction work before any work begins.
  3. Coordinate materials testing necessary to meet the Minimum Testing Requirements that **MaineDOT** established for the **Project**.
  4. Submit contract modifications to **MaineDOT** for review and comment before they are executed. **MaineDOT** reserves the right not to reimburse the **City** for work under a contract modification executed without **MaineDOT's** review and approval.
  5. If applicable, provide **MaineDOT** with revised as-built plans for the completed **Project**.
- 3P. MAINEDOT OVERSIGHT. **MaineDOT** may inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.
- 3Q. MAINTENANCE. The **City** shall maintain the completed **Project** for its standard useful life or 20 years, whichever is longer. Maintenance shall consist of general upkeep and repairs necessary to preserve year-round public access to the facility and maintain a firm, stable and slip-resistant surface in all seasons.

#### ARTICLE 4 – RECORDS & AUDIT

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- 4A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **3 years** from the date either of **MaineDOT's** acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this retention period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.
- 4B. The **City** and any contracted party working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records, as reasonable times. Copies of records shall be furnished at no cost to the federal or state agencies requesting them.
- 4C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

#### ARTICLE 5. GENERAL PROVISIONS

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- 5A. GOVERNING LAW. The **Parties** agree to comply with all applicable federal, state and local laws, regulations, executive orders and ordinances including, but not limited to, the provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), "Transportation"; Title 23 in the Code of Federal Regulations (CFR), "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

- 5B. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law.
- 5C. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of 23 M.R.S.A. Section 63, "Confidentiality of Records."
- 5D. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, the **City** agrees as follows:
1. The **City** 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 a bona fide occupational qualification. The **City** shall take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The **City** agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
  2. The **City** shall state – in all solicitations or advertising for employees placed by or on behalf of the **City** relating to this Agreement – 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.
  3. The **City** shall cause the foregoing provisions to be inserted in any contract for any work covered by this Agreement so that such provisions shall be binding upon each contractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- 5E. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.
- 5F. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
- 5G. 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.
- 5H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

## ARTICLE 6. CONFLICT OF INTEREST

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- 6A. No person or entity with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.
- 6B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for the **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and in behalf of the **City**.
- 6C. No person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to **MaineDOT** before the person or entity entered into the contract.

## ARTICLE 7. DEBARMENT

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- 7A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** 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.
- 7B. If the **City** contracts with any consultant, contractor or other party pursuant to this Agreement, the **City** shall require that party and its principals to certify that they:
1. Have not within a 3-year period preceding the date of such contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with the following: a.) obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; b.) violating federal or state antitrust statutes; and c.) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  2. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1 of this section; and

3. Have not within a 3-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

7C. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

## ARTICLE 8 – TERMINATION

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8A. DEFAULT. **MaineDOT** will send the **City** a Notice of Default, in accordance with Article 8B below, if the **City** commits any of the following actions:

1. Withdraws its support for the **Project**, resulting in cancellation of the **Project**;
2. Fails to advertise the **Project** within 3 years of the execution date of this Agreement;
3. Takes any action that renders the **Project** ineligible for federal-aid funding;
4. Uses **Project** funds for a purpose not authorized by this Agreement;
5. Misrepresents or falsifies any claim for reimbursement;
6. Fails to meet the standards of performance outlined in this Agreement.

8B. FOR CAUSE. **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 8A. **MaineDOT** will give the **City** a cure period of 14 calendar days, effective on the **City**'s receipt of Notice of Default. If the **City** fails to address all defaults within this cure period or such longer period as **MaineDOT** may authorize, **MaineDOT** may terminate this Agreement for cause, with these conditions:

1. **MaineDOT** will recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
2. The **City** shall forfeit all federal funds remaining in the terminated **Project**.

8C. FOR CONVENIENCE. The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

1. **MaineDOT** will reimburse the **City** for federally eligible work performed under this Agreement until the effective date of termination for convenience. The **City**'s share of **MaineDOT**'s costs for work on the **Project** shall be deducted from the final invoice amount owed to the **City**.
2. **MaineDOT** will reprogram all federal funds remaining in the **Project**.

## ARTICLE 9. EXPIRATION

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This Agreement shall expire upon **MaineDOT**'s payment of the final invoice from the **City** or **5 years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

1. Article 3Q, "Maintenance," shall be enforced for at least twenty (20) years.
2. Article 4, "Records & Audit," shall remain in effect until all activity pursuant to this provision is completed.

3. Article 5B, "Indemnification," shall remain in effect until specifically terminated by the **Parties** or negated by law.
4. Article 5C, "Confidentiality," shall remain in effect until negated by law.

ARTICLE 10. AGREEMENT APPROVAL

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The undersigned municipal representative assures that the **City's** legislative body has approved the **City's** entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

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

**City of Portland**

**Maine Department of Transportation**

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

By: \_\_\_\_\_  
**William A. Pulver, P.E., Director,**  
Bureau of Project Development

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my LPA Manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my control.*

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

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The **City of Portland** and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

If the Federal portion of the **Project** exceeds \$25,000, an authorized representative from the **City** shall sign this document under (B) below and return it with the **Project** Agreement. Additionally, the **City** shall provide the following information, *if applicable*:

A) The total compensation and names of the top five officers if:

- More than 80% of the **City**'s annual gross revenues are from the U.S. Federal Government; and
- Those revenues are greater than \$25 million annually; and
- Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

B) Legal name and DUNS<sup>®</sup> number on file with the Central Contractor Registration (CCR):

**City of Portland, Maine**

**07-174-7802**

Sign and Print Legal CCR Name

DUNS<sup>®</sup> Number

Authorized Representative: \_\_\_\_\_

**Jon Jennings, City Manager**

# U.S. Department of Transportation (U.S. DOT)

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

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### **DOT Order No. 1050.2A**

The **City of Portland** (the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (U.S. DOT) 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), (prohibits discrimination on the basis of 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 hereinafter are referred to 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 ensure 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 U.S. DOT, 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 programs:

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 (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal 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 ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.*

- 3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or Agreement subject to the Acts and the Regulations.**
4. If applicable, the Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. If applicable, the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

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

DATED \_\_\_\_\_

By \_\_\_\_\_  
**Jon Jennings, City Manager**  
**City of Portland**

Encl.: Appendices A and E

## APPENDIX A TO THE TITLE VI ASSURANCES

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During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to 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 **Federal Highway Administration**, 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 **Federal Highway Administration**, 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 **Federal Highway Administration**, 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.

**Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, 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.

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## APPENDIX E TO THE TITLE VI ASSURANCES

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During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of 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-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of 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-aid 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 on the basis of 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 on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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 ensure compliance with Title VI, you must take reasonable steps to ensure 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.*).