

Order 32-19/20

Passage: 9-0 (Strimling absent) on 9/4/2019

Effective 9/14/2019

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

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

**ORDER APPROVING THE AGREEMENT BETWEEN PORTLAND
AND THE MAINE DEPARTMENT OF TRANSPORTATION
RE: CONGRESS SQUARE INTERSECTION IMPROVEMENTS**

ORDERED, that the federally funded, Locally Administered Project Agreement between the Maine Department of Transportation and the City of Portland to construct improvements to the Congress Square Intersection with State Work Identification Number 024293.00 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: _____
TEDOCS #: _____
PROGRAM: <u>Multimodal Program</u>

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federally Funded Locally Administered Project
 With the
City of Portland
 Regarding
Traffic and Pedestrian Safety Improvements at Congress Square
 (Payable)

<i>MaineDOT Use Only</i>	
Agreement Amount: <u>\$100,000.00</u>	Federal Authorization Date: <u>June 10, 2019</u>
Federal Share: <u>\$38,460.00</u>	Federal Project #: <u>2429300</u>
State Share: <u>\$0.00</u>	MaineDOT WIN: <u>024293.00</u>
Local Share: <u>\$61,540.000</u>	Municipality's Vendor ID: <u>VC1000073476</u>
Effective Date: <u>Upon MaineDOT's Signature</u>	Municipality's DUNS #: <u>07-174-7802</u>
Expiration Date: <u>January 31, 2023</u>	CFDA #: <u>20.205 Highway Planning and Construction</u>

This Agreement for a federally funded locally administered project is entered into by the State of Maine Department of Transportation (**MaineDOT**) with its headquarters at 16 Child Street in Augusta, Maine, and the City of Portland (the **Municipality**) with its principal offices at 293 Congress Street in Portland, Maine, which jointly shall be referred to as the **Parties**.

RECITALS

1. This Agreement shall cover final design and right-of-way work through final Plans, Specifications & Estimate (PS&E) for traffic and pedestrian safety improvements at the intersection of Congress, High and Free streets in Portland, also known as "Congress Square" (the **Project**); and
2. The Municipality previously completed a Preliminary Design Report for the Project using other funds, outside of the scope of this Agreement; and
3. Funding from MaineDOT and the Municipality for construction and construction engineering will be awarded in a future Work Plan, once the design effort produces a more refined cost estimate; and
4. The Municipality, as a sub-recipient of federal funding, shall manage a Locally Administered Project subject to MaineDOT oversight to ensure that all federal and state requirements are met.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing statements, the Parties agree to the following:

APPENDICES

The following appendices shall be incorporated into this Agreement:

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

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 manage the Project and carry out the Municipality’s responsibilities. This Local Project Administrator shall abide by the latest edition of MaineDOT’s Local Project Administration Manual & Resource Guide (LPA Manual). If the certified administrator leaves or ceases to oversee the Project, the Municipality shall stop work and notify the MaineDOT Project Manager, who will determine a course of action.
 - Local Project Administrator: Mike Tremblay, Senior Engineer, certified through 6/30/2023
Email: mtremblay@portlandmaine.gov
Phone: (207) 874-8881
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 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.** Federal participation shall begin after completion of the steps below:
 - A. The Federal Highway Administration (FHWA) authorizes the Project; and
 - B. MaineDOT executes this Agreement; and
 - C. MaineDOT issues the Municipality written Notice to Proceed with preliminary engineering.
2. **PROJECT COST.** The estimated cost of the Project is **\$100,000.00** (Project Cost), which the Parties shall share as shown below.

Estimated Local Match		Federal Share		Estimated Project Cost
61.54%	\$61,540.00	38.46%	\$38,460.00	\$100,000.00

- A. **FEDERAL SHARE.** MaineDOT, using funding from the FHWA, will share in the Project Cost at the rate of 38.46 percent, up to a maximum contribution of **\$38,460.00**.
- B. **LOCAL MATCH.** The Municipality shall share in the Project Cost at the rate of 61.54 percent, for an estimated contribution of **\$61,540.00**. The Municipality shall not use other federal funds to match funding from the FHWA, unless federal law authorizes such use. Additionally, the Municipality shall be responsible in full for:
 - i. All costs exceeding the estimated Project Cost, 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 determines to be ineligible for federal participation.
- C. **FINAL COST.** If the actual cost of the Project is less than the estimated Project Cost, the final amounts owed will be adjusted in accordance with the percentages above.

3. REIMBURSEMENT. The Municipality shall submit invoices to MaineDOT periodically requesting reimbursement of the federal share of costs incurred on the Project. Invoices should be modeled after *Communication 4* from the LPA Manual, as follows:
 - A. Invoices shall be submitted on a schedule agreed to by the Parties.
 - B. Each invoice shall include a progress report for the service period of the invoice.
 - C. Each invoice shall document the charges incurred and proof of payment made in sufficient detail to satisfy the MaineDOT Project Manager.
 - D. Each invoice shall show MaineDOT's and the Municipality's portions of Project costs, including a running total of costs incurred to date.
 - E. The Municipality must certify that amounts claimed are correct and not claimed previously.
 - F. Upon completion of the work and payment of all remaining invoices for the Project, the Municipality shall submit to MaineDOT a request for final reimbursement modeled after *Communication 20* from the LPA Manual. Payment of this final invoice shall be contingent on a passing inspection of the Project by MaineDOT or its designee and the receipt by MaineDOT of a completed consultant evaluation from the Municipality.
4. MAINEDOT COSTS. MaineDOT will charge to the Project costs incurred for work on the Project. The Municipality shall share in these costs commensurate with its overall percentage of the Project. MaineDOT will reconcile these costs upon completion of the Project and deduct the Municipality's share from the final invoice payment under section 3F above.
5. TERM. The Municipality shall complete the Project and submit a final invoice to MaineDOT by the Expiration Date of this Agreement. The Municipality shall submit any request for a date extension to MaineDOT in writing before the end of the original period of performance.
6. REPAYMENT. If the Municipality withdraws from the Project, the Municipality shall refund all Project payments from MaineDOT and reimburse MaineDOT for all costs incurred on the Project.
7. STATE OF MAINE'S RIGHT OF SET-OFF. MaineDOT shall have all of its common-law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for purposes of set-off money due to the Municipality under this Agreement up to any amount due to the State with regard to this Agreement or any other agreement with MaineDOT; any other agreement with any state agency, including any agreement for a term commencing before the term of this Agreement; and any amount due to the State for any other reason including, but not limited to, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT will exercise its rights of set-off in accordance with standard state practices including, in cases of set-off pursuant to an audit, finalization of the audit by MaineDOT or the State Controller.
8. NON-APPROPRIATION. The Municipality acknowledges and agrees that if MaineDOT receives insufficient funding to support this Project, if funds programmed for this Project are de-appropriated, or if MaineDOT fails to 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.

PROJECT DEVELOPMENT

1. **KICKOFF**. The Parties held Project Kickoff in Portland on April 4, 2019. This meeting served as the required Tier II certification of the Local Project Administrator.
2. **PROGRESS REPORTS**. The Municipality shall provide written progress reports for the Project at intervals established by MaineDOT's Project Manager.
3. **USE OF CONSULTANTS**. If the Municipality intends to pay its consultant engineer with funds from the FHWA, the Municipality must have used a qualifications-based selection in compliance with 23 CFR Part 172 and Chapter 2 of the LPA Manual, "Consultant Selection," as follows:
 - 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.
 - C. The provisions of MaineDOT's Consultant General Conditions shall apply to consultant work paid for with funding from MaineDOT.
 - D. The Municipality shall obtain MaineDOT's written approval before modifying a contract. Work done without an approved and executed modification in place shall be non-reimbursable.
 - E. The Municipality shall evaluate the performance of a consultant upon contract completion. A copy of the evaluation shall be provided to MaineDOT with the final invoice for the Project.
4. **SURVEY**. Unless MaineDOT approves otherwise in writing, MaineDOT will perform survey work and prepare an Existing Conditions Plan for sections of the Project on the state highway system.
5. **DESIGN**. The Municipality, in coordination with its consultant engineer, shall be responsible for preparing all design plans, specifications, estimates and contract documents for the Project, in accordance with MaineDOT's Engineering Practices and Procedures, Standard Specifications, and Standard Details. The design of the Project shall comply with the Americans with Disabilities Act (ADA) and all other applicable laws and regulations.
 - A. The Municipality shall submit the following to MaineDOT for review and comment:
 - i. Design plan impacts in MicroStation format (if rights-of-way will be acquired); and
 - ii. Final plans, specifications and estimate package (PS&E).
 - B. The Municipality shall assure that the contract book for the Project references MaineDOT's Standard Specifications and contains the following:
 - i. Davis-Bacon wage rates; and
 - ii. Form FHWA-1273; and
 - iii. Federal Title VI Assurances signed by the Municipality's top administrative officer.
 - C. If the right-of-way stage of the Project will require MaineDOT staff to use electronic design files prepared for the Municipality, the files 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, construction standards and specifications that apply to the Project and will require changes if they are not met.

- E. MaineDOT will give the Municipality written authorization to advertise for construction bids once MaineDOT accepts the final PS&E package as complete. Advertising without such authorization will make the Project ineligible for federal funding.
 - F. Receipt of construction authorization from MaineDOT shall not relieve the Municipality and its consultant of responsibility for meeting all engineering standards and regulatory requirements that apply to the Project.
6. PUBLIC PARTICIPATION. During design work on the Project, the Municipality shall give the public and all abutters timely notice and an opportunity to comment on the Project through a public participation process that is appropriate for the scope of work and acceptable to MaineDOT. The Municipality shall provide MaineDOT with a public process certification modeled after *Communication 10* from the LPA Manual, as part of the Project's environmental package.
 7. NEPA PROCESS. MaineDOT will carry out the National Environmental Policy Act (NEPA) compliance process. Upon finalization of the Preliminary Design Report for the Project, the Municipality shall provide MaineDOT with signed *Communication 11* from the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.
 8. PERMITS. Upon obtaining all approvals, permits and licenses for the Project, the Municipality shall provide MaineDOT with a signed environmental certification modeled after *Communication 12* from the LPA Manual, as part of the final PS&E package for the Project.
 9. UTILITIES. The Municipality shall provide MaineDOT with a signed utility certification modeled after *Communication 13* from the LPA Manual, as part of the final PS&E package for the Project.
 10. RIGHT-OF-WAY. The Parties will coordinate acquisition of rights-of-way, as follows:
 - A. MaineDOT will carry out the right-of-way process on the state highway system.
 - B. The Municipality shall carry out the right-of-way process for sections of the Project not on the state highway system. In doing so, the Municipality shall:
 - i. Abide by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act); and
 - ii. Follow the standards set out in the MaineDOT Right of Way Manual; and
 - iii. Provide MaineDOT with a right-of-way certification modeled after *Communication 14* from the LPA Manual, as part of the final PS&E package.
 - C. The Municipality shall dedicate permanently to the Project, for public use, any municipal property needed 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. ADVERTISE. Unless MaineDOT approves otherwise in writing, the Municipality shall use competitive bidding to hire a construction contractor upon receiving written authorization to advertise from MaineDOT. The Municipality shall follow the procedures in MaineDOT's Standard Specifications (November 2014 Edition), Section 102, "Bidding."

13. **AWARD.** Upon receiving written approval from MaineDOT, the Municipality 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 Municipality shall administer the contract for the duration of the Project.
14. **CONSTRUCTION.** During construction of the Project, the Municipality shall:
 - A. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method;
 - B. 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;
 - C. Coordinate materials testing to meet the Minimum Testing Requirements for the Project;
 - D. Submit proposed contract modifications to MaineDOT for review and concurrence, acknowledging that MaineDOT reserves the right not to reimburse the Municipality for work performed under a modification with which MaineDOT does not concur; and
 - E. If applicable, provide MaineDOT with revised as-built plans for the completed Project.
15. **FINAL INSPECTION.** MaineDOT or its designee will inspect the completed Project for compliance with the design plans, specifications and provisions of the construction contract. MaineDOT reserves the right to withhold reimbursement to the Municipality for work that is out of compliance.

OPERATION AND MAINTENANCE

The Municipality shall have maintenance responsibility for portions of the Project inside the Urban Compact Area, in accordance with Maine law: Title 23 MRSA, §754, "Town maintenance in compact areas." *This section shall survive the expiration of this Agreement.*

RECORDS AND AUDITS

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.** When auditing the Project, MaineDOT or its designee shall follow generally accepted government auditing standards and 2 CFR §200, Subpart F: "Audit Requirements."
4. *This Records and Audits section shall survive the termination or expiration of this Agreement.*

MISCELLANEOUS PROVISIONS

1. **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 §200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”
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 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. *This indemnification 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 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.

CONFLICT OF INTEREST

1. No official or employee of the Municipality with a direct or indirect financial or other personal interest in any contract or subcontract for the Project shall negotiate, make, accept or approve any such contract or subcontract.
2. No professional performing services for the Municipality on the Project shall have 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 Municipality. No officer or employee of a professional performing services for the Municipality 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 in the public record and such officer or employee has not participated in such 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 direct or indirect 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 openly 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 in connection with 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 charged 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 covered transactions 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. Additionally, 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 will 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. Fails to advertise the Project within 3 years of the execution date of this Agreement without receiving an extension in writing from MaineDOT;
 - C. Takes any action that makes the Project ineligible for federal funding;
 - D. Uses Project funds for a purpose not authorized by this Agreement;
 - E. Misrepresents or falsifies any claim for reimbursement;
 - F. 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 made and all of 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 official 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.

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: _____

** I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9502, et seq. – that the signature, if electronic: (a) is intended to have the same force as a manual signature, (b) is unique to me, (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):

City of Portland, Maine
Sign and Print Legal CCR Name

07-174-7802
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.).