

Order 265-16/17

Passage: 8-0 (Duson absent) on 6/5/2017

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 6/15/2017

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: WOODFORD'S CORNER STORMWATER IMPROVEMENTS**

**ORDERED**, that the two-party agreement between the Maine Department of Transportation (MDOT) and the City of Portland, for Construction Phase stormwater improvements on Forest Avenue and in Woodford's Corner, with the MDOT identification number of 20543, is hereby approved in substantially the form attached hereto; and

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

<i>MaineDOT Use Only</i>	
TEDOCS #:	_____
CT#:	_____
CSN#:	_____
Program:	_____

**MAINE DEPARTMENT OF TRANSPORTATION  
UTILITY RECEIVABLE AGREEMENT  
For Non-Compensable Installation**

<i>(MaineDOT Use Only)</i>	
Project Location: <b>Woodfords Corner</b>	Total Contract Value: <b>\$571,909.40</b>
State WIN #: <b>20543.00</b>	Vendors Customer #: <b>17A12144</b>
Federal Aid Project #: <b>STP-2054(300)</b>	Contract Begin Date: <b>May 8, 2017</b>
	Contract End Date: <b>December 30, 2018</b>

This Agreement is entered into this 8th day of May, 2017, between the **Maine Department of Transportation** (hereafter the “Department”) and **City of Portland**, duly authorized and existing under the Laws of the State of Maine and having an office in the City of Portland, County of Cumberland (the “Utility”) (the Department and the Utility are collectively referred to as the “Parties”).

1. The Department is implementing a transportation project identified as “Federal Aid Project Number STP-2054(300)WIN: 20543.00 (the “Project”) for highway improvements in the City of Portland, Cumberland County;
2. In connection with the Project, the Department has prepared plans and specification for the Project that resulted in the following determination:

The Utility has expressed an interest in installing new utility facilities within the limits of the public highway right-of-way and the impact limits of the Project (the “Affected Facilities”).

3. The Affected Facilities consist of new sewer main installation;
4. The Utility has prepared and provided to the Department the scope of work necessary for relocating or installing the Affected Utilities (the “Utility Work”) and the estimated costs associated therewith, which are outlined in **Appendix A**, attached hereto and made a part hereof. The costs associated with the Utility Work are the sole responsibility of the Utility.

5. The Parties wish to establish a process for including the Utility Work in the Department's construction contract for the Project.

**NOW, THEREFORE**, the Parties agree as follows:

**6. Plans, Specifications and Estimate:**

- a. The Utility shall, at its own expense, perform and provide all engineering, design and related services related to the Utility Work necessary to enable the Department and/or its consultant to generate construction plans, specifications and an estimate of material quantities for the Utility Work to be included in the Project contract. The Utility will be responsible for locating and recording the location of all Utility Work, including services and other appurtenances within the Project area. To the extent possible and consistent with laws, practices and policies of the Department and the industry, the Utility Work shall be performed in accordance with the plans and specifications provided by the Utility and, if applicable, the most recent version of the Department's Standard Specifications.
- b. All plans shall be on sheets of the same size used by the Department and be reproducible by black and white printing. Specifications shall be on 8 ½ x 11-inch paper, suitable for binding with the Department's specifications. The estimate of quantities shall be in the form prescribed by the Department. In the event of field changes to the Utility Work, the Utility shall prepare any additional plans and specifications and the Department shall prepare a Project change order and amend this Agreement incorporating any changes therein. All plans and specifications will be marked with the Federal Aid Project Number referenced in this Agreement.
- c. The Utility will provide the Department with the plans, specifications and an updated estimate as described in Appendix A no later than one month prior to the scheduled advertise date for the Project.
- d. The Utility shall be responsible for obtaining a Utility Location Permit from the Department in accordance with Title 35-A M.R.S.A. Chapter 25 and for recording the location of all utilities in a manner and form to be specified by the Department.

The Department will prepare the Project contract documents to include the Utility Work specified in Appendix A. The Utility agrees to have these items included in the Department's Project construction contract. Bidders will be required to bid both the Project work and the Utility Work. The Utility Work will be paid for by the Utility, and any changes to the Utility Work estimate or amount will be paid for through a written modification of this agreement approved by both the Utility and the Department.

**7. Inspection:**

- a. The Utility shall be responsible for providing all engineering and inspection associated with the Utility Work including computing quantities for payment and other incidental and related work unless otherwise stated herein. By the end of each work day, whenever Utility Work is performed, the Utility will provide the Department's on-site representative with an itemized summary of all the Utility Work completed.
- b. The Department shall provide inspection of the quality and compaction of backfill installed in connection with the construction contract, excluding bedding and other special backfills and materials used in the installation of the Utility Work.
- c. If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to the following:
  - i. Should the Utility find the Project's contractor's materials or workmanship to be insufficient in any way, the Utility agrees to inform the Department's on-site representative as soon as possible, but no later than the end of the day in which the problem is identified.
  - ii. As administrator to the construction contract, the Department's on-site representative shall be responsible for authorizing all payments relating to the Utility Work, issuing all directives to the Project's contractor and making the final determination in the event of any disagreements.

**8. Ownership of Completed Utilities:** Upon completion of the Utility Work the Utility shall assume complete ownership of, and responsibility for, the utility facilities installed in connection with the Utility Work.

**9. Claims:** The Utility shall be responsible for the prompt review and settlement of any claims arising from or related to the Utility Work or its impact on the Project.

**10. Indemnification:** The Utility shall indemnify, defend and hold harmless the Department and its officers, employees, agents and assigns, from and against any and all claims, liability or expenses, including but not limited to reasonable attorney's fees and litigation costs (the "Claims"), to the extent such Claims are caused, or alleged to have been caused, by acts or omissions of the Utility or any of its officers, employees, agents, representatives, supervisors, contractors, subcontractors or consultants in connection with the performance of its obligations under this Agreement. Nothing in this Agreement is intended or shall be construed to waive any defense, immunity or limitation of liability that may be available to

11. the Department or the Utility pursuant to the Maine Tort Claims Act (14 M.R.S. § 8101 *et seq.*) or any other privileges or immunities provided by law. The terms outlined in this section shall survive any termination or expiration of this Agreement.
  
12. **Buy America Requirements:** This agreement is subject to the requirements of Buy America in accordance with Federal Regulation 23 CFR 635.410 Section 1518. Specific requirements are presented in MaineDOT Standard Specification Section 100, Appendix A, Section 3.A., Buy America.
  
13. **Subsequent Excavations and/or Installations:** Except in the case of an emergency, the Utility acknowledges and agrees to refrain from applying for a permit for the excavation of the highway within the limits of the Project for a period of at least 3 years following the completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. The Utility further acknowledges and agrees that all subsequent excavations and/or installations within the right-of-way of the Project limits shall be regulated and controlled in the manner specified by the most recent version of the Department's "*Utility Accommodation Rules*", which are incorporated and made a part hereof by reference. The terms outlined in this section shall survive any termination or expiration of this Agreement.
  
14. **Termination:** The Department may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Utility and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by the Department or specifically as the result of any failure by the Utility to perform any of the requirements of this Agreement to the satisfaction of the Department.
  
15. **Non-Appropriation:** Anything herein to the contrary notwithstanding, the Utility acknowledges and agrees that, although the execution of this Agreement by the Department manifests the Department's intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of the Department in excess of such appropriations.

16. **Payment:** If the Utility Work is included in the Project contract pursuant to Section 6.e. above, an invoice for the full cost of the Utility Work will be created, or periodic invoices will be created for portions of the Utility Work as they are completed. The Department will bill the Utility as appropriate for any charges related to adjusted quantities associated with the Utility Work, which shall be determined by the contract prices and the completed quantities of the Utility Work items. The Department will issue a final invoice after all the Utility Work is complete, all quantities are verified and any required adjustments have been made. The final invoice will include any remaining costs or credits. The Utility shall submit payment to the Department within 30 days from the invoice date.

**Contact Information:**

For the Department:

Name: Rick Paraschak  
Address: Augusta Me  
E-mail: [rick.paraschak@maine.gov](mailto:rick.paraschak@maine.gov)  
Telephone: 207-593-3132

For the City:

Name: Bradley Roland  
Address: Portland, Me  
E-mail: <[brad@portlandmaine.gov](mailto:brad@portlandmaine.gov)>  
Telephone: 207-874-8840

17. **No Relief of Responsibilities:** Nothing in this agreement is intended, nor shall be interpreted, to relieve the Utility of any responsibilities or duties imposed upon it by law.

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

**IN THE PRESENCE OF:**

**CITY OF PORTLAND**

\_\_\_\_\_

Witness

By: \_\_\_\_\_

Print Name: Jon P. Jennings  
Portland City Manager  
Duly Authorized

**STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_

Witness

By: \_\_\_\_\_

Print Name: Jeff Tweedie  
Program Manager  
Duly Authorized

**APPENDIX A**  
**PROJECT SCOPE**

**MAINE DEPARTMENT OF TRANSPORTATION**  
**UTILITY RECEIVABLE AGREEMENT**

**Portland, City of**  
**Portland, Maine**

FEDERAL AID PROJECT NO. STP-2054(300)  
STATE PROJECT IDENTIFICATION NUMBER (WIN) 20543.00

**Project Scope:** Excavation, backfill, testing and materials for the installation of new sewer main and services.

**ESTIMATE OF UTILITY WORK:**

202.11	Remove Portland Cement Concrete Pavement	SY	\$ 23.16	1140	\$ 26,402.40
202.20	Remove Bituminous Concrete Pavement	SY	\$ 5.50	1470	\$ 8,085.00
202.60	Remove Storm Drain or Sewer Pipe, All Depths and Sizes	LF	\$ 50.00	140	\$ 7,000.00
203.25	Granular Borrow	CY	\$ 20.00	240	\$ 4,800.00
203.28	Test Pits	VF	\$ 75.00	50	\$ 3,750.00
203.35	Crushed Stone (Overdepth)	CY	\$ 35.00	100	\$ 3,500.00
206.061	Structural Earth Excavation (Overdepth)	CY	\$ 25.00	90	\$ 2,250.00
206.07	Structural Rock Excavation	CY	\$ 180.00	360	\$ 64,800.00
304.10	Agg Subbase Course Type D	CY	\$ 25.00	540	\$ 13,500.00
304.14	Agg Base Course Type A	CY	\$ 30.00	290	\$ 8,700.00
403.207	Hot Mix Asphalt 19.0 MM	T	\$ 100.00	270	\$ 27,000.00
403.208	Hot Mix Asphalt 12.5 MM	T	\$ 105.00	390	\$ 40,950.00
603.149	10-inch Diameter PVC or HDPE Storm Drain Pipe	LF	\$ 75.00	100	\$ 7,500.00
603.159	12-inch Diameter PVC or HDPE Storm Drain Pipe	LF	\$ 85.00	280	\$ 23,800.00
603.169	15-inch Diameter PVC or HDPE Storm Drain Pipe	LF	\$ 95.00	200	\$ 19,000.00
603.179	18-inch Diameter PVC or HDPE Storm Drain Pipe	LF	\$ 135.00	350	\$ 47,250.00
603.199	24-inch Diameter PVC or HDPE Storm Drain Pipe	LF	\$ 150.00	400	\$ 60,000.00
604.131	4-foot Diameter Catch Basin	EA	\$ 3,500.00	13	\$ 45,500.00
604.150	4-foot Diameter Manhole	EA	\$ 4,200.00	4	\$ 16,800.00
604.153	5-foot Diameter Manhole	EA	\$ 4,800.00	6	\$ 28,800.00
604.161	Modify Structure	EA	\$ 1,500.00	1	\$ 1,500.00
604.18	Adjusting Manhole or Catch Basin to Grade	EA	\$ 400.00	18	\$ 7,200.00
629.05	Hand Labor, Straight Time	HR	\$ 35.00	20	\$ 700.00

629.06	Mason, Straight Time	HR	\$ 45.00	20	\$ 900.00
631.105	Air Tool and Compressor (inc operator)	HR	\$ 65.00	20	\$ 1,300.00
631.12	All Purpose Excavator (inc operator)	HR	\$ 125.00	20	\$ 2,500.00
631.121	Heavy Duty Excavator (inc operator)	HR	\$ 155.00	20	\$ 3,100.00
631.13	Bulldozer (inc operator)	HR	\$ 95.00	20	\$ 1,900.00
631.172	Truck - Large or Small (inc operator)	HR	\$ 70.00	20	\$ 1,400.00
631.22	Front End Loader (inc operator)	HR	\$ 95.00	20	\$ 1,900.00
631.36	Foreman, Straight Time	HR	\$ 55.00	20	\$ 1,100.00
633.07	4"/6" Service Leads	LF	\$ 110.00	315	\$ 34,650.00
654.08	Trench Density Test	EA	\$ 85.00	28	\$ 2,380.00
	Item Totals				<b>\$ 519,917.40</b>
	Mobilization 10%	LS	10% of Total		<b>\$ 51,992.00</b>
	Total Agreement				<b>\$ 571,909.40</b>

**ESTIMATED PAYMENT SCHEDULE:**

<b>Utility</b>	<b>Payment Amount</b>	<b>Estimated Invoice Date</b>
City of Portland	\$100,000.00	Contract Award
City of Portland	\$300,000.00	October, 2017
City of Portland	\$171,909.40	December, 2018