

Order 51-18/19

Passage: 7-0 (Ali, Batson absent) on 9/5/2018

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 9/15/2018

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

**ORDER APPROVING THREE-PARTY AGREEMENT BETWEEN PORTLAND,
PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM
AND MAINE DEPARTMENT OF TRANSPORTATION
RE: BRIGHTON AVENUE ROUTE 25 MULTI-MODAL PROJECT**

ORDERED, that the three-party Partnership Agreement between the Maine Department of Transportation, Portland Area Comprehensive Transportation System and the City of Portland for improvements to the sidewalks, bicycle and transit facilities and signals and pavement on Brighton Avenue 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.



MaineDOT use only

TEDOCS #: insert TEDOCS#
 CTM #: insert CTM#
 CSN #: insert CSN#
 PROGRAM: Bureau of Planning

State of Maine
DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT

Proposed Improvements to Brighton Avenue (Route 25)
 (Non-Monetary)

<i>MaineDOT Use Only</i>	
Project Location: <u>PORTLAND</u>	Estimated Project Amount: <u>\$195,000.00</u>
State WIN: <u>023715.00</u>	Agreement Begin Date: <u>Upon MaineDOT Signature</u>
Federal Aid Project #: <u>2371500</u>	Agreement End Date: <u>5 years from date last signed below</u>
PACTS ID#: <u>PACTS</u>	Municipality ID#: <u>PORTLAND</u>

This Cooperative Agreement (the “Agreement”) is entered into by and between the Maine Department of Transportation (MaineDOT), an agency of state government, the City of Portland (the “Municipality”), a municipality in the State of Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (PACTS) (MaineDOT, the Municipality and PACTS are collectively referred to as the “Parties”).

RECITALS

- A. The work that is the subject of this Agreement consists of making improvements to Brighton Avenue beginning at Dartmouth Street and extending northwest 1.85 miles to Rowe Avenue, in Portland, Maine (the “Project”).
- B. MaineDOT, through its partnership with Maine’s Metropolitan Planning Organizations (“MPOs”), is charged with managing and dispersing MPO state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT’s MPO partner for the Portland Urbanized Area.
- C. PACTS has selected the Project for inclusion in the 2018-2019-2020 MaineDOT Work Plan, using Federal and State capital improvement funding allocated by MaineDOT.
- D. The Municipality has approved the Project and supports the decision by MaineDOT and PACTS to program the Project, and will contribute financially to the Project through its municipal share.

- E. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- F. This Agreement is intended to cover the roles and responsibilities of the Parties during the preliminary engineering and right-of-way phases of the Project, and to establish the financial obligations of each Party through all phases of the Project.
- G. If the Parties cooperatively agree to proceed to full Project development, this Agreement will be modified to reflect any increase in Project cost estimates. MaineDOT and the Municipality will then enter into a separate municipal-state agreement to establish responsibilities of MaineDOT and the Municipality through the remaining phases of the Project (the "Municipal-State Agreement").

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

1. Appendices:

The following appendices are hereby incorporated into this Agreement:

- Appendix A - Project Application
- Appendix B – Requirements for Operation and Maintenance of Traffic Signals
- Appendix C – Additional Work Requested by Municipality
- Appendix D - Enhanced Project Scoping Report
- Check if no appendices attached

2. Scope of Project:

The Project shall replace deficient signal structures and signal heads at six intersections, including pedestrian signal and ADA ramp modifications, bicycle detection and transit priority as needed. Sidewalk rehabilitation to bring sidewalks into good condition and ADA compliance. Mill and fill paving, and provision of enhanced bicycle facilities along Brighton Avenue (Route 25). Modifications in the Rosemont area as needed to support the proposed METRO Husky Line. The project includes elements of Preservation (roadway and sidewalks) and Modernization (traffic/pedestrian/transit priority signals, roadway/bikeway striping-pavement markings, transit stop upgrades, and achieving ADA compliance along Brighton Avenue). (the "Scope of Work").

The terms of this Agreement apply to the implementation of the preliminary engineering and right-of-way phases of the Project unless this Agreement is otherwise modified to include all phases of Project development, in which case the table set out in Section 3 below shall be adjusted accordingly.

3. Project Cost Sharing and Payment Schedule:

- a. **Financial Obligations:** The total estimated cost of the Project is \$195,000.00 (the "Project Estimate"). The Parties agree to share in all Project costs associated with the Project phases outlined in the table below. Each Party's share of the Project's actual

costs associated with each phase shall be allocated as follows, unless otherwise negotiated by mutual agreement of the Parties.

- i. **Federal Share** (provided by MaineDOT through PACTS Federal Allocation) - 75% of eligible Project costs, up to a maximum of \$146,250.00.
- ii. **State Share** (provided by MaineDOT through PACTS State Allocation) - 0% of eligible Project costs, up to a maximum of \$0.00.
- iii. **Municipal Share** (provided by the Municipality through the Municipality's obligation of funds) - 25% of eligible Project costs, which is estimated at \$48,750.00, plus 100% of the following:
 1. Any costs deemed ineligible for federal and state participation.
 2. Any costs associated with additional work requested by the Municipality that is outside the Project scope of work.
 3. All Project costs exceeding the Project Estimate after the above referenced Party Shares have been applied, unless otherwise agreed to in writing by the Parties through a written modification to this Agreement.

Work Phase	Estimated PACTS Federal Share		Estimated PACTS State Share		Estimated Municipal Share		Estimated Total Cost
	%	\$	%	%	%	\$	\$
Preliminary Engineering	75.0	\$ 142,500.00	0.0	\$ -	25.0	\$ 47,500.00	\$ 190,000.00
Right of Way	75.0	\$ 3,750.00	0.0	\$ -	25.0	\$ 1,250.00	\$ 5,000.00
Construction	75.0	TBD	0.0	TBD	25.0	TBD	TBD
Construction Engineering	75.0	TBD	0.0	TBD	25.0	TBD	TBD
TOTALS:		\$ 146,250.00		\$ -		\$ 48,750.00	\$ 195,000.00

a. **Payment Schedule:** The PACTS Share will be disbursed by MaineDOT in accordance with the allocations outlined above. If the Parties elect to move forward with full development of the Project as contemplated in this Agreement, the Municipal Share will be invoiced by MaineDOT in accordance with the payment schedule outlined in the Municipal-State Agreement described herein. If the Parties choose not to proceed to full Project development and no Municipal-State Agreement is executed, the Municipal share, based on the allocations outlined above, will be invoiced as promptly as practicable upon that decision having been made. Upon receipt of such invoice, the Municipality shall submit payment to MaineDOT within thirty (30) days.

4. **Project Milestones:** MaineDOT agrees to share information about the Project with the Municipality and PACTS at the following milestones, as appropriate:

- Project kickoff/initial team meeting/formal public contact;
- Horizontal/Vertical Alignment Complete (HVAC);
- Preliminary public meeting;

- Preliminary Design Report (PDR) complete;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- Peer reviews;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or Project Estimate.

5. Project Design:

- a. The Parties shall hold a project kickoff meeting to go over the scope of work, Project cost, and schedule for the Project before work will begin.
- b. MaineDOT shall prepare, or cause to be prepared, all plans, specifications, engineer's estimates and contract documents as appropriate for the Project using MaineDOT's standard project development process to ensure adherence to federal and state regulations (the "Preliminary Project Development Materials").
- c. As a component of preparing the Preliminary Project Development Materials, MaineDOT shall, at a minimum, be responsible for the following:
 - i. Performing all right-of-way related investigations to determine whether or not there may be a need to acquire temporary and/or permanent rights to develop the Project as well as, if applicable, all title examination, appraisal, appraisal review, negotiation and acquisition/condemnation activities for any property rights that must be acquired to accommodate the Project, and all necessary mapping services reflecting such property acquisitions.
 - ii. Coordinating with affected utilities and railroads to identify existing locations and/or implementing any relocation impacts that may be created by the development of the Project.
 - iii. Performing all necessary National Environmental Policy Act (NEPA) compliance processes for the Project.
 - iv. Performing all necessary permitting activities required in connection with the Project.
- d. MaineDOT shall be the sole administrator of the Project contract(s). MaineDOT will pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified in the **Project Cost Sharing and Payment Schedule** set out herein. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
- e. After completion of the PDR, and a decision to proceed with Project construction has been made, MaineDOT and the Municipality will then execute the Municipal-State Agreement covering their obligations regarding Project advertisement, award, construction and construction engineering. Said Municipal-State Agreement will incorporate financial obligations that are consistent with those reflected in this Agreement, unless such terms are otherwise negotiated by mutual agreement of the Parties.

- f. The Municipality shall ensure that affected, municipally-owned utilities are responsive to Project demands and are completing necessary activities in accordance with the Project schedule as established and coordinated by MaineDOT. Failure to do so may result in MaineDOT delaying implementation of the Municipality's future projects until appropriate utility responsiveness is obtained.

6. **Public Involvement:** MaineDOT shall be responsible for implementing and leading any and all required public involvement activities and any necessary media coordination associated with the any phases of the Project covered by this Agreement. The Parties agree to participate as partners in all such actions.

7. **Changes to Project Scope:**

- a. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project scope, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.
- b. The Municipality may, at its election, request that changes be made or work added to the Project during the period of design that benefit the Municipality, provided that the Municipality agrees in writing to pay any additional cost associate therewith. In the event that such changes or work are approved for federal participation in the cost thereof, such additional cost may be reduced to the non-federal share (the "Additional Work Requested by Municipality").

8. **Termination:**

- a. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. If MaineDOT's termination under this clause is not directed by the Municipality and PACTS, MaineDOT shall be responsible for covering all Project costs incurred up to the time of termination.
- b. MaineDOT also reserves the right to terminate all provisions pertaining to any Additional Work Requested by Municipality at any time prior to the award of a contract to construct the Project because of any failure by the Municipality to meet any of the conditions and stipulations set forth in this Agreement.
- c. If the Municipality withdraws its financial support for the Project leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality's financial obligations outlined herein, including, but not limited to, reimbursement of all federal and state funds expended up to the time of such termination.
- d. This Agreement may be terminated at any time by mutual written agreement of all Parties, provided that such written agreement shall address the allocation between the Parties of any costs, expenses, penalties and/or liabilities expended, committed or imposed in connection with the Project and the Project contract as of such date of termination.
- e. In no event shall any such action taken under this subsection be deemed a breach of contract, nor shall it represent any individual Party's waiver of claims for breach of

contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.

- f. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.

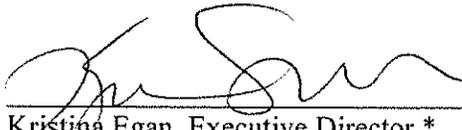
9. Miscellaneous Provisions:

- a. Amendment and Modification. This Agreement, and all attachments, may only be modified or amended in writing and signed by duly authorized representatives of the Parties.
- b. Debarment. The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- c. Indemnification. To the extent permitted by law, the Municipality and PACTS shall each individually indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from the indemnifying Party's own negligent or wrongful acts, errors or omissions or by that Party's officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive the termination or expiration of the Project.
- d. Obligation of State Funds. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and the federal government and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- e. Municipal Authority and Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs outlined herein.
- f. State of Maine's Rights 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 of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term

FACTS: Portland Area Comprehensive Transportation System
970 Baxter Boulevard, Suite 201
Portland, ME 04103
Attn.: Sara Zografos, Transportation Director
Email: szografos@gpcog.org

Each Party agrees to promptly notify all other Parties of any changes to the above referenced contact information.

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



Date 7/19/18
Kristina Egan, Executive Director *
Greater Portland Council of Governments
For Portland Area Comprehensive Transportation System
Duly authorized

Date _____
Jon Jennings, City Manager *
Municipality of Portland
Duly authorized

Date _____
Herb Thomson, Director, Bureau of Planning *
Maine Department of Transportation
Duly authorized

** I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.*