Order 155-19/20
Passage: 9-0 on 4/14/2020 Effective 4/24/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (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 THE MAINE DEPARTMENT OF TRANSPORTATION AND THE CITY OF PORTLAND RE: VERANDA STREET

ORDERED, that the Municipal/State Agreement between the Maine Department of Transportation and the City of Portland for improvements to Veranda Street, with Work Identification Number 021745, 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 #: _____
CTM #: _____
CSN #: _____
PROGRAM: Bridge

MAINE DEPARTMENT OF TRANSPORTATION

MUNICIPAL/STATE AGREEMENT

PROPOSED IMPROVEMENTS TO VERANDA STREET

(MaineDOT Use Only)

Project Location: Portland	Estimated Municipal Share: $29,122.00
State WIN #: 021745.00	Vendor Customer #: 17A12144
Federal Aid Project #: NHPP-2174(500)	Agreement Begin Date: _____
	Agreement End Date: (5 years from the date last signed below)

This Agreement is entered into between the **Maine Department of Transportation** (hereafter **MaineDOT**) and the **Municipality of Portland**, a municipal corporation located in the County of Cumberland (hereafter the "Municipality") (collectively hereinafter the "Parties").

RECITALS

A. The scope of work that is the subject of this Agreement consists of Bridge Replacement and Roadway Realignment on I-295 and Veranda Street in Portland, Maine, (hereafter the "Project"). Please also see Exhibit A.

B. 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.

C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project's Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

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

D. The following checked appendices are hereby incorporated into this Agreement by reference, and any perpetual maintenance appendices shall survive the expiration of this Agreement:

- ☒ Appendix A – Project scope, cost sharing, and payment schedule *(not required for non-monetary agreements.)*
- ☐ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
- ☐ Appendix B – Perpetual Drainage Maintenance
- ☐ Appendix B – Perpetual Landscape Maintenance
- ☐ Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
- ☐ Appendix B – Perpetual Traffic Signal Operation and Maintenance
- ☐ Appendix B – Perpetual Traffic Signal Operation and Shared Maintenance

☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
☒ Appendix C – Additional work requested by Municipality

E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. When applicable, refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.

2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.

3. The Municipality agrees that MaineDOT and its contractors are exempt from all local ordinances, including and not limited to the Municipality Noise Ordinance.

4. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

5. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to MaineDOT approval. In the event that the cost of these changes or work are approved for federal participation, the Municipality's additional cost may be reduced by the amount of the federal contribution.

G. Traffic Control:

6. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:

    i. MaineDOT's Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will

discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).

ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.

iii. MaineDOT's PM & Designer will incorporate these comments where practical based on engineering judgment.

iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.

H. <u>Utilities:</u>

7. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.

8. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.

9. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.

I. <u>Governing Law:</u>

10. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after 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**.** Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.

11. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality's Responsibility:

12. When applicable, if the Municipality withdraws its financial support for the Project, leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for 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. If the Municipality fails to reimburse MaineDOT for such costs incurred, after receiving an invoice seeking such reimbursement, MaineDOT may exercise its rights of set-off to recover the requested amount.

13. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.

14. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition including snow and ice control.

15. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.

16. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.

17. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

18. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.

19. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality 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 MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction**.**

    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 that by their very nature are intended to survive.***

L. Miscellaneous Provisions:

20. **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.

21. All provisions of this Agreement, ***except those that by their very nature are intended to survive***, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

22. **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 commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller. When applicable, MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.

23. **Non-Appropriation.** Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees 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, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.

24. **Assignment.** No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.

25. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and may be sent via email which shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Alternatively, communications can be mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
24 Child Street
16 State House Station
Augusta, ME 04333-0016
Attn.: Scott Rollins
Email: Scott.Rollins@maine.gov

Municipality: City of Portland
389 Congress Street
Portland, ME 04101
Attn.: Christopher Branch, Director of Public Works
Email: cbranch@portlandmaine.gov

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

MUNICIPALITY OF PORTLAND	**MAINE DEPARTMENT OF TRANSPORTATION**
By: _____	By: _____
Jon Jennings, City Manager	Richard J. Crawford, P.E., Director Bureau of Project Development
_____	_____
(Date Signed)	(Date Signed)

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.

Original Y Modification N MOD No. N/A

APPENDIX A

PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF **PORTLAND**

PROPOSED IMPROVEMENTS TO **ROADWAY REALIGMENT ON I-295 AND VERANDA STREET**

FEDERAL AID PROJECT NO. **NHPP-2174(500)**

STATE PROJECT IDENTIFICATION NUMBER (WIN) **21745.00**

Project Scope: Veranda Street Bridge #5933 Replacement and Roadway Realignment on I-295 and Veranda Street in Portland, Maine

Funding Outline: The Total Project Estimated Cost is $ 17,910,572.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal	Portion	MaineDOT (State) Portion		
	%	$	%	$	%	$	$
Preliminary Engineering	0.0%		90.0%	$ 1,350,000.00	10.0%	$ 150,000.00	**$ 1,500,000.00**
Right of Way	0.0%	$ -	90.0%	$ 27,000.00	10.0%	$ 3,000.00	**$ 30,000.00**
Construction	0.0%		90.0%	$ 13,810,725.00	10.0%	$ 1,534,525.00	**$ 15,345,250.00**
Duct Bank/4" Conduit Under Bridge	50.0%	$ 6,200.00	0.0%	$ -	50.0%	$ 6,200.00	**$ 12,400.00**
Construction Engineering	0.0%	$ -	90.0%	$ 900,000.00	10.0%	$ 100,000.00	**$ 1,000,000.00**
PROJECT SHARES		$ 6,200.00		$ 16,087,725.00		$ 1,793,725.00	**$ 17,887,650.00**
Total Cost of Additional Work Requested by Municipality (Below)	100.0%	$ 22,922.00					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		$ 29,122.00					

Rev. 12/7/18

(Check if applicable)

☑ **Additional Work as outlined in Appendix C to this Agreement.**

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

Additional Work	Cost: 100% Municipal Share
Powder Coating the Mast Arms, Pedestal Poles and the additional cost to add decorative mast arm bases	$ 5,000.00
3" Lighting Conduit to the Greenspace Area	$ 17,922.00
Municipal's 50 % Share of Duct Bank/4" Conduit Under Bridge (Included in Table above)	
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY	**$ 22,922.00**

Payment:

The Municipality shall submit payment to MaineDOT within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project**.** Invoicing will include the following:
   a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
   b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
   c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

Municipality Name	Receivable Amount	Estimated Invoice Date
Portland	$29,122.00	5/15/2020
	$0.00	
	$0.00	
Total Receivable Amount:	**$29,122.00**	

Project Information
Municipality Name: Portland
Federal Aid Project #: NHPP-2174(500)
WIN:021745.00

APPENDIX C

ADDITIONAL WORK

MAINE DEPARTMENT OF TRANSPORTATION

Transportation Improvement Project

1. **Description of Work Being Added to Project by the Municipality:**
   a) **The Municipality agrees to pay for the additional cost to add powder coating to mast arms and poles and the additional cost to add decorative mast arm bases.**

   b) **The Municipality agrees to pay for half of the cost to add a duct bank under the bridge and for a 4" conduit in that duct bank.**

   c) **The Municipality agrees to pay the total additional cost for adding a 3" lighting conduit under Veranda Street that will run from the stub pole next to the cabinet at the Northbound off-ramp intersection to the future greenspace area.**

2. **The Municipality agrees to furnish all plans, specifications and estimates necessary to include additional work under the Project; No ☒ - *Disregard this Section,* or Yes ☐ - as follows:**

   a) All plans and specifications shall conform to the standards used by MaineDOT as set forth in the latest version of its *"Highway Design Guide" and "Standard Details"* and comply with MaineDOT**'s** Utility Accommodation Rules.

   b) All plans shall be size "D" drawings measuring 22 inches by 36 inches reproducible in black and white print.

   c) All specifications shall be printed on 8-1/2 inch wide by 11 inch long paper suitable for binding in MaineDOT's proposal book.

   d) The Municipality shall provide a detailed engineer's estimate of the cost of such additional work calculated in a manner acceptable to MaineDOT and allowable for bidding. The Municipality agrees that all cost information developed for such bidding shall be kept confidential pursuant to the provisions of Title 23 of the Maine Revised Statutes Annotated (M.R.S.A.) Section 63.

   e) The Municipality shall obtain all permits, licenses, releases and approvals necessary or incidental to the additional work described in Section 1 above.

   f) The submission of all plans, specifications and estimates; as well as all permits, licenses, releases and approvals shall be done in such a timely manner as not to unreasonably delay MaineDOT's schedule for soliciting bids to construct the Project.

g) The Municipality may utilize the electronic exchange of CADD data; the Municipality must accept pertinent electronic input data as specified by MaineDOT. A copy of MaineDOT's specifications can be found on its website under Business and CADD support. It is the responsibility of the Municipality to translate this data into other formats required for use in their design software.

3. <u>Following solicitation of competitive bids for the Project under Paragraph D of the Agreement; but before award of a contract to construct the Project that includes additional work as described in Section 1 above; action must be taken by the Municipality</u>:

a) If the bid price received for such additional work exceeds the detailed engineers estimate by any more than ten (10%) percent, the Municipality may reject such bid price by notifying MaineDOT in writing within five (5) business days following the opening of such bids. The Municipality may waive such right by doing so in writing anytime prior to or during such period. Otherwise, all decisions pertaining to the acceptance of bids and the award of any construction contract shall be the sole discretion of MaineDOT**.**

b) If the bid price for such additional work is acceptable to the Municipality**,** the Municipality shall pay MaineDOT, an amount equal to the Municipality's share of the estimated cost of such additional work based upon the prices of the successful bidder. Following receipt of payment, MaineDOT agrees to award a contract to construct the Project including the additional work.

c) The parties agree that any additional adjustments to the amount of any payment or deposit made pursuant to the provisions of subparagraph b) above because of any differences between estimated and actual quantities which effects the actual cost of such additional work shall be due and payable upon determination of final quantities, unless MaineDOT determines that the actual cost of such additional work is expected to differ measurably from the amount of such payment, due to changes in quantities placed or work performed during the period of construction.

Project Information
Municipality Name: Portland
Federal Aid Project #: NHPP-2174(500)
WIN:021745.00

EXHIBIT A

GREEN SPACE AREA

MAINE DEPARTMENT OF TRANSPORTATION
Transportation Improvement Project

1. The Department will do rough grading (Phase 1) in the area that will become the green space (located to the east of I-295 and the bridge and south of Veranda Street. The grading and contours are as depicted in Exhibit A-1.

2. If applicable, the Department agrees to stockpile any excess material in this future green space area to aid the City in its green space are project.

3. The City agrees to complete the final grading (Phase 2) under their green space project. The City will fund Phase 2 in their City CIP in 2021 and will conduct the work in the Spring of 2022.

Keith Smith Landscape Architecture

207.318.7714
keesthome@gmail.com

Owner/Client:

City of Portland, Maine

Draft: KBS

Scale: As Shown

Date: 09.20.19

Stamp

Rev.	Reference in MDOT Plan Set	Issued for	Date	By
.			02.14.2020	KBS

Status
Concept

Project
Veranda Bridge Replacement Open Space

Drawing Name
Concept Plan

Sheet
OS-1