

INFRASTRUCTURE COMMITTEE
Tuesday, March 24, 2015 at 5:15 p.m.
City Hall Council Chambers

Agenda

1. **Approval of Outflow Metering, Account #10014001**
(Copy of Memo by Superintendent Brad Moore Attached)
2. **Agreement with Maine DOT, Resurfacing a Portion of Broadway from Husson Ave to Center Street-WIN #18639.00**
(Council Order, Council Action, and Agreement Attached)
3. **Agreement with Maine DOT, Resurfacing a Portion of Union Street from Griffin Road to Vermont Avenue-WIN #18640.00**
(Council Order, Council Action, and Agreement Attached)
4. **Agreement with Maine DOT, Resurfacing a Portion of Union Street from Vermont to 0.43 Easterly-WIN #018642.00**
(Council Order, Council Action, and Agreement Attached)
5. **Agreement with Maine DOT, Independence Street and Water Street Traffic Signal Improvements-WIN #018645.00**
(Council Order, Council Action, and Agreement Attached)
6. **Agreement with Maine DOT, Broadway Mill and Fill from Stillwater Avenue to Center Street-WIN #020232.42**
(Council Order, Council Action, and Agreement Attached)
7. **Agreement with Maine DOT, Modification of Agreement for Resurfacing of a Portion of Broadway**
(Council Order, Council Action, and Agreement Attached)

MEMO

March 19, 2015

To: Infrastructure Committee
Fr: Brad Moore

Re: Approval of Outflow Metering
Unifirst Corporation, Account #10014001

Unifirst Corporation operates a commercial laundering service at 70 Godsoe Road. They have approached the City requesting permission to use 'outflow' metering as the basis for their sewer bill. The City Code in chapters 252.9 C.(3) and 252.25 K., allow for the installation of outflow meters to accurately measure wastewater leaving a facility. The basis for this request is that some amount of water that is used in laundering does not reach the sewer system but leaves the facility as water vapor during the drying process. The laundering industry has documented this and the City has approved similar requests in the past.

Unifirst Corporation has provided all the necessary documentation and calibration of the outflow meter installation. Therefore staff recommends and requests the Infrastructure Committee approve the use of the outflow meter for sewer billing from this facility. If approved, this agreement will have a term of three years per City Code, whereupon staff will review and request continuance of the agreement.



Assigned to Councilor

CITY OF BANGOR

(TITLE.) ORDER, Authorizing the Execution of Agreement for Maine Department of Transportation Local Project – WIN #018639.00, Resurfacing of a Portion of Broadway

ORDERED,

THAT: the City Manager is hereby authorized and directed to execute an agreement with the Maine Department of Transportation for the following:

An Agreement with the Maine Department of Transportation – Resurfacing of a Portion of Broadway, WIN# 018639.00

Copy of the agreement is attached.

COUNCIL ACTION

Item No. _____

Date: April 13, 2015

Item/Subject: ORDER, Authorizing Execution of Agreement for Maine Department of Transportation Local Project – WIN 018639.00, Resurfacing a Portion of Broadway

Responsible Department: Engineering

Commentary: This order would authorize the City Manager to execute a Local Project Agreement with the Maine Department of Transportation for design and construction work for a mill and fill treatment on a portion of 0.65 mile of Broadway (Route 15) starting at Husson Avenue and ending at Center Street.

The Maine Department of Transportation has approved federal and state funds in an amount not to exceed \$872,612.00 which includes a Federal share of \$698,089.60 or 80% of construction costs, State share of \$87,261.20 or 10% of construction costs, and a City share of funding of \$87,261.20 or 10% of construction costs. As part of that project, the City would need to enter into a local project agreement with the Maine Department of Transportation which have been reviewed and recommended for approval by the Infrastructure Committee at its March 24, 2015 meeting.

John Theriault, City Engineer
Department Head

Manager's Comments:

City Manager

Associated Information: Councilor Order and Agreement

Budget Approval:

Finance Director

Legal Approval:

City Solicitor

Introduced for
 Passage CONSENT
 First Reading
 Referral

Page __ of __

**MAINE DEPARTMENT OF TRANSPORTATION
Locally Administered Project Agreement**

With the

City of Bangor

Regarding

Resurfacing of a portion of Broadway: WIN 018639.00

(MaineDOT Use Only)

| | |
|--|---|
| Total Project Amount: \$872,612.00 | MaineDOT WIN: 018639.00 |
| Federal Award Amount: \$698,089.60 (80%) | Federal Project Number: STP-1863(900) |
| State Match: \$87,261.20 (10%) | Federal Authorization Date: _____ |
| Municipal Match: \$87,261.20 (10%) | Sub-recipient's Vendor ID: VC1000007010 |
| Effective Date: _____ | Sub-recipient's DUNS® Number: 07-173-9692 |
| Expiration Date: _____ | CFDA #20.205: Highway Planning & Construction |

This subaward agreement for a federal-aid project is between the Maine Department of Transportation, a Maine State Government agency headquartered at 24 Child Street in Augusta, Maine (“**MaineDOT**”) and the **City of Bangor**, a municipal corporation and body politic with its principal offices at 73 Harlow Street in Bangor, Maine (“**the City.**”) **MaineDOT** and the **City** are collectively referred to as “**the Parties.**”

This Agreement contains the following attachments:

1. Federal Funding Accountability and Transparency Act (*signature required*);
2. Federal Title VI Assurances.

WHEREAS, the scope of work described herein was programmed for the **MaineDOT** 2015-2017 Work Plan by the Bangor Area Comprehensive Transportation System, the metropolitan planning organization for the Bangor Urbanized Area, located at 12 Acme Road, Suite 102, in Brewer, Maine (“**BACTS**”); and

WHEREAS, **MaineDOT** approved the **City**'s request to administer the project at the local level.

NOW, in consideration of the foregoing, **MaineDOT** and the **City** agree as follows:

ARTICLE 1. PROJECT OVERVIEW

- A. **SCOPE OF WORK:** Preliminary engineering and construction work for a mill-and-fill treatment of 0.65 mile of Broadway (Route 15), starting at Husson Avenue and ending at Center Street (“**the Project.**”) Any substantial change to this scope of work shall require approval from **BACTS** and **MaineDOT** to be eligible for federal and state funding.
- B. **FUNDING.** The estimated total cost of the **Project** is eight hundred seventy-two thousand six hundred twelve dollars (**\$872,612**) to be shared at the rates and terms described in Article 3.

- C. **ROLE OF CITY.** The **City** shall take the lead in developing the **Project** and assign a full-time municipal employee with certification from **MaineDOT** to be in responsible charge of the **Project**. At all times, this Local Project Administrator shall follow the policies and procedures in the latest edition of **MaineDOT's Local Project Administration Manual**.
- D. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to carry out the State's responsibilities regarding the **Project**. This person or his/her designee will have the authority to request design changes to meet applicable laws and design standards; accept or reject any invoice; review construction activities to ensure compliance with contract documents; and take all other action necessary to ensure the proper performance of this agreement.

ARTICLE 2. PROJECT DEVELOPMENT

- A. **AUTHORIZATION.** The **City** shall receive Authorization to Proceed from **MaineDOT** before starting work or executing a contract for services under this Agreement. All municipal costs incurred before authorization is given shall be ineligible for reimbursement.
- B. **KICKOFF.** Before starting work, the **City** shall review with **MaineDOT's** Project Manager the scope of work, estimated cost, schedule, and legal requirements for the **Project**. If necessary, the **City** shall provide an updated schedule and cost estimate within a reasonable timeframe.
- C. **PROGRESS REPORTS.** The **City** shall provide **MaineDOT** with monthly progress reports for the duration of the **Project** listing tasks completed, any changes in staffing, and any issues that could affect the schedule.
- D. **CONSULTANT SERVICES.** The **City** may contract for consultant engineering services as necessary to develop and oversee the **Project**. In doing so, the **City** shall:
1. Use qualifications-based selection pursuant to federal regulation 23 CFR, Part 172.
 2. Obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
 3. Ensure that "Consultant General Conditions for Local Public Agencies" govern all work, including insertion of Form FHWA-1273 and Civil Rights Assurances into every contract.
 4. Obtain **MaineDOT's** written approval before modifying any contract. ***MaineDOT** reserves the right not to reimburse the **City** for work covered by a modification executed without prior approval or for work performed before the effective date of a modification.*
- E. **DESIGN.** All design plans, specifications, estimates and contract documents shall be developed in accordance with the latest versions of **MaineDOT's Highway Design Guide and Standard Specifications (2014)**, as follows:
1. The **City** shall submit a preliminary design report (PDR), if applicable, and the final plans, specifications and estimate (PS&E) package to **MaineDOT** for review and comment.
 2. The **City** shall address to **MaineDOT's** satisfaction any changes requested or concerns expressed before the **Project** may be advertised for construction.
 3. Advertising for construction bids or moving to the construction stage without **MaineDOT's** written authorization shall render the **Project** ineligible for federal and state funding.

- F. **QUALITY CONTROL.** The **City** shall be responsible for the quality of the design plans, specifications and estimates for the **Project** using a documented quality-control process. Acceptance of the final PS&E package by **MaineDOT** shall not relieve the **City** of responsibility for the quality of the engineering documents for the **Project**.
- G. **PUBLIC PARTICIPATION.** The **City** shall provide opportunity for the public to learn about the **Project** and express concerns, using a public process that is appropriate for the scope of work and acceptable to the **MaineDOT** Project Manager. Documentation and a public process certification (Letter 16) shall be submitted to **MaineDOT** with the final PS&E package.
- H. **ENVIRONMENTAL PROCESS.** The **City** or its contracted consultant shall prepare and submit to **MaineDOT** all required environmental documents, including but not limited to Letter 11 and the National Environmental Policy Act (NEPA) checklist. **MaineDOT** will prepare and submit to the Federal Highway Administration all documentation required under NEPA.
- I. **PERMITS.** The **City** shall obtain all approvals, permits and licenses needed for the **Project**. Copies shall be submitted to **MaineDOT** with an environmental certification (Letter 12) with the final PS&E package.
- J. **UTILITIES.** The **City** shall coordinate the **Project** with all utilities and submit documentation to **MaineDOT** with a utility certification (Letter 13) with the final PS&E package. **MaineDOT's** revised Utility Accommodation Rules (October 2014) shall apply to any utility relocations.
- K. **RIGHT OF WAY.** If applicable, **MaineDOT** will acquire any rights necessary to construct and maintain the **Project**.
- L. **FORCE ACCOUNT.** If the **City** intends to construct the **Project** with its municipal work force or to furnish any materials for the **Project**, the **City** shall obtain **MaineDOT's** written authorization before proceeding. If so authorized to use a "force account" process, the **City** shall comply with the applicable regulations – 23 CFR, Parts 635.201 to 635.205.
- M. **SOLICITATION OF BIDS.** Competitive bidding shall be used to hire a contractor unless a "force account" process is authorized. The **City** shall solicit for bids upon **MaineDOT's** written authorization in accordance with the final, approved plans and specifications as follows:
1. The **City** shall follow the procedures in **MaineDOT's** "Standard Specifications" and adhere to all applicable federal requirements, unless otherwise authorized by **MaineDOT**.
 2. The **City** and **MaineDOT** shall have the right to accept or reject the bids submitted.
 3. The **City** shall not award a contract without **MaineDOT's** written approval.
- N. **CONTRACT AWARD.** Upon **MaineDOT's** written approval, the **City** shall award a construction contract to the lowest responsive, responsible bidder as follows:
1. The **City** shall administer the contract for the duration of the **Project**.
 2. Form FHWA-1273 shall be physically incorporated into the contract.
 3. The contract shall specify that the **Project** comply with the latest version of **MaineDOT's** "Standard Specifications" (November 2014) and applicable special provisions.

- O. CONSTRUCTION. The **City** shall hold a pre-construction meeting with **MaineDOT**, the contractor, utilities and any other parties involved in or affected by the construction process. During the work, the **City** shall provide the supervision, inspection and documentation necessary to ensure that the **Project** is completed to **MaineDOT's** satisfaction in accordance with the plans, specifications and provisions of the contract, as follows:
1. The **City** shall use procedures acceptable to **MaineDOT** to document the quantity and quality of all construction-related work. The **City** shall provide monthly progress reports and shall retain all documentation as provided under Article 5.A.
 2. The **City** or its contracted consultant shall be responsible for coordinating all materials testing necessary to meet Minimum Testing Requirements for the **Project**, in compliance with 23 CFR, Part 637, "Quality Assurance Procedures for Construction." Test results shall be provided to **MaineDOT** upon request.
 3. Any contract modification shall be submitted to **MaineDOT** for review and comment before it is executed. ***MaineDOT** reserves the right not to reimburse the **City** for work associated with a contract modification executed without **MaineDOT's** prior review.*
 4. Traffic in work zones shall be controlled in accordance with Part VI of the federal Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).
 5. Upon completion, the **City** shall provide compliance certification that the **Project** was constructed, quantities were measured and documented, and materials were tested in accordance with the approved plans, specifications and provisions of the contract.
- P. MAINEDOT OVERSIGHT. **MaineDOT** may inspect construction activities and documentation – and any test materials used – to ensure compliance with the **Project** specifications and construction contract. **MaineDOT** may reject work or materials out of compliance and may withhold reimbursement to the **City** for any such work or materials.

ARTICLE 3. FINANCIAL PROVISIONS

- A. MAINEDOT SHARE. **MaineDOT**, using federal and state resources programmed by **BACTS**, will reimburse the **City** for ninety percent (**90%**) of **Project** expenditures incurred that are deemed to be eligible for such funding, up to a maximum reimbursement of seven hundred eighty-five thousand three hundred fifty dollars and eighty cents (**\$785,350.80**.)
- B. LOCAL SHARE. The **City** shall share in all **Project** expenditures deemed eligible for federal and state funding at the rate of ten percent (**10%**), said share estimated to be eighty-seven thousand two hundred sixty-one dollars and twenty cents (**\$87,261.20**.) The **City** shall be responsible for one hundred percent (100%) of any costs deemed ineligible for reimbursement and all costs exceeding the maximum amount of this Agreement as outlined in Article 1.B, unless otherwise approved in writing by **BACTS** and **MaineDOT**.
- C. MAINEDOT COSTS. All costs incurred by **MaineDOT** staff in developing and overseeing the **Project** shall be paid for out of the **Project**, including but not limited to design reviews, environmental work, utility support, right-of-way support, and construction engineering. The **City** shall share in these costs commensurate with its overall portion of the **Project**. **MaineDOT** will reconcile these costs upon completion of the **Project** and shall deduct the **City's** share from the final invoice payment to the **City**.

- D. REIMBURSEMENT. The **City** may invoice **MaineDOT** periodically for the federal and state shares of **Project** expenditures eligible for federal and state funding, up to the maximum in Article 3.A. Invoices shall be submitted no more than monthly, subject to these conditions:
1. Invoices shall be submitted on the **City**'s letterhead and reference WIN 018639.00.
 2. Each invoice shall be accompanied by a progress report in accordance with Article 2.C.
 3. Each invoice shall contain an itemized account of expenditures incurred during the period covered by the invoice, consistent with the approved budget for the **Project**. Backup documentation and proof of payment made shall accompany each invoice.
 4. Each invoice shall have an accumulative total and a breakdown of **MaineDOT**'s and the **City**'s shares of **Project** costs.
 5. Each invoice shall include a certification from the **City** that all amounts claimed are correct, due and not claimed previously.
 6. Payment of the final invoice shall be subject to a final inspection of the completed **Project** to determine the acceptability of the work.
 7. **MaineDOT** may withhold reimbursements to the **City** to recover previous payments for items subsequently deemed to be ineligible for federal or state funding.
- E. REPAYMENT. If the **City** withdraws its support for the **Project**, leading **MaineDOT** to cancel the **Project** and terminate this Agreement for cause, **MaineDOT** reserves the right to require the **City** to refund all reimbursements made and to repay **MaineDOT** fully for all **Project** costs incurred. All federal and state funds returned to **MaineDOT** by the **City**, as well as all federal and state funds remaining in the **Project**, shall be made available to **BACTS** for reprogramming once the **Project** is closed out.
- F. REMAINING FUNDS. Any federal and state funds remaining in the **Project** shall be made available to **BACTS** for reprogramming upon payment of the final invoice from the **City**.

ARTICLE 4. PROJECT RECORDS AND AUDIT

- A. **Project** records shall consist of all printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all **Project** records for at least **four (4) years** from the date of **MaineDOT**'s acceptance of the final invoice for the **Project**. If any litigation, claim, negotiation or audit has begun before the end of this four (4) year period, all **Project** records shall be kept at least until all action and resolution of all issues arising from it are complete. All records shall be provided to **MaineDOT** upon request after completion or termination of the **Project**.
- B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the U.S. Government and the State of Maine to inspect and audit **Project** documents at reasonable times. Copies shall be furnished at no cost.
- C. The **City** shall keep **Project** records in such form as may be easily audited. Audits shall be performed in accordance with generally accepted government auditing standards and Title 2 CFR, Part 200, Subpart F - "Audit Requirements."

ARTICLE 5. GENERAL PROVISIONS

- A. Governing Laws. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement will be subject to applicable federal laws and regulations, including but not limited to Title 23 in the United States Code (USC) for statutory law and Title 23 in the Code of Federal Regulations (CFR) for administrative law, as well as Title 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- B. Indemnification. To the extent permitted by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officials, employees, agents, consultants or contractors. Nothing herein 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 provision shall survive the termination or expiration of this Agreement.*
- C. Confidentiality. Information pertaining to engineering estimates of construction costs shall be kept confidential in accordance with the provisions of Maine law (23 MRSA, Section 63.)
- D. Independent Capacity. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.
- E. Flow Down. Contracts between the **City** and all consultants, contractors or other third parties shall contain or incorporate by reference all applicable provisions of this Agreement.
- F. Equal Employment Opportunity. The **City** shall adhere to all applicable EEO requirements in the administration of the **Project**, as follows:
1. The **City** shall not discriminate against any employee or applicant for employment *relating specifically to work under this Agreement* because of race, color, religious creed, sex, national origin, ancestry, age or physical handicap unless related to a bona fide occupational qualification. The **City** shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age or physical handicap during any period of employment under this Agreement. Such action shall include, but not be limited to: employment, upgrading, demotions, transfers, recruitment, layoffs or terminations, rates of pay or other forms of compensation and selection for all forms of training and apprenticeships. The **City** shall post prominently in places readily available to all employees and applicants for such employment under this Agreement notices setting forth the provisions of this paragraph.
 2. In all solicitations or advertising for employees relating to work done under this Agreement, the **City** shall state that all qualified applicants shall receive consideration for employment regardless of race, color, religious creed, sex, national origin, ancestry, age or physical handicap.
 3. The **City** shall send to each representative of any of its employees covered by a collective-bargaining agreement – or any other contract or understanding under which labor or services are to be furnished under this Agreement – a notice advising of the **City's** commitment under this Article and shall post copies prominently in places readily available to all such employees and applicants for employment.

4. The **City** shall include all of the foregoing equal employment opportunity provisions under this Article in any contract for services or work for the **Project** so that such provisions are binding upon each consultant and contractor – with the exception of any contract for the purchase of standard commercial supplies or raw materials. To the maximum extent feasible, the **City** or any of its consultants and contractors shall list all suitable employment openings with the Maine Job Service. *This provision shall not apply to employment openings that the **City** or any of its consultants and contractors propose to fill from within their own organizations.*
- G. Set-Off. **MaineDOT** shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, without being limited to, the State of Maine’s option to withhold for purposes of set-off any payment due to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract commencing before the effective date of this Agreement. **MaineDOT** shall exercise its set-off rights in accordance with standard state practices including – in case of set-off pursuant to an audit – the finalization of the audit by **MaineDOT** or the State Controller.
- H. No Assignment Without Approval. The **City** shall not assign this Agreement to a third party or dispose of this Agreement without specific written consent from **MaineDOT**. In no case shall such action release the **City** from liability under this Agreement.
- I. Binding Effect. The **City** and **MaineDOT** shall be bound by the terms of this Agreement. This provision shall apply to the executors of this Agreement, their successors, administrators and legal representatives.

ARTICLE 6. TERMINATION

- A. FOR CAUSE. **MaineDOT** may terminate this Agreement for cause in the event of default as defined in Section 6.B below. The **City** will have a cure period of fourteen (14) calendar days after receiving a Notice of Default. If the **City** fails to make a good-faith effort to correct all defaults within the cure period, **MaineDOT** may terminate this Agreement upon written Notice of Termination for Cause, with the following conditions:
 1. The **City** and all consultants and contractors working on the **Project** shall cease work immediately – except for work required to protect public health and safety – and turn over to **MaineDOT** all **Project** records within thirty (30) days of the termination date.
 2. If termination is the result of the **City**’s failure to correct any occurrence of default, **MaineDOT** reserves the right to recover from the **City** all reimbursements made in accordance with Article 3, “Financial Provisions.”
 3. All federal and state funds remaining in the terminated **Project**, as well as any federal and state funds recovered from the **City**, shall be made available to **BACTS** for reprogramming in accordance with Article 3.F, “Remaining Funds.”
- B. GROUNDS FOR DEFAULT. The **City** shall receive a Notice of Default if the **City**:
 1. Takes any action without approval from **MaineDOT** that leads to cancelation of the **Project** or the loss of eligibility of the **Project** for federal or state funding.
 2. Uses **Project** funds for a purpose other than what is authorized by this Agreement.

3. Misrepresents or falsifies of any claim for reimbursement.
 4. Fails to meet standards of performance outlined in this Agreement.
 5. Breaches any material provision of this Agreement.
- C. FOR CONVENIENCE. This Agreement may be terminated for convenience by mutual consent of the **Parties** for any reason not defined as “default.” **MaineDOT** shall notify the **City** through a written Notice of Termination for Convenience, with the following conditions:
1. If termination is other than for default by the **City**, the **City** shall be reimbursed for federally eligible work or service performed until the effective termination date. The **City’s** share of costs incurred by **MaineDOT** staff in the development and oversight of the **Project** shall be deducted from amounts due to the **City** in accordance with Article 3.C, “MaineDOT Costs.”
 2. All **Project** records shall be turned over to **MaineDOT** within thirty (30) days of the date of the Notice of Termination for Convenience.
 3. All federal and state funds remaining in the **Project** shall be made available to **BACTS** for reprogramming once the **Project** is closed out.

ARTICLE 7. EXPIRATION

All provisions of this Agreement – except for Article 4.A (records), Article 5.B (indemnification) and Article 5.C (confidentiality) – shall expire upon satisfactory completion of the terms of this Agreement or **four (4) years** from the final day of the month in which this Agreement was fully executed, whichever occurs first. The provisions of Article 5.B and Article 5.C shall remain in full effect until terminated in writing by the **Parties** or negated by law.

ARTICLE 8. DEBARMENT

- A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its officers, agents and employees associated with the **Project** are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency. If the **City** is unable to certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or any of its officers, agents and employees associated with the **Project** is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency.
- B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state agency.
- C. The **City** agrees that if it contracts with an outside entity, that entity and its principals shall certify that they:
1. Have not within a 3-year period preceding the date of such contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with the following: a.) obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; b.) violating federal or state antitrust statutes; and c.) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

2. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1 of this section; and
3. Have not within a 3-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default.

ARTICLE 9. CONFLICT OF INTEREST

By signing this Agreement, the **City** agrees that it shall not enter into a contract with any outside entity that has a financial or other interest in the **Project** or in its outcome, other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the project or related matters; and c.) any interest in real property acquired for the **Project** unless such real property interest is openly disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 10. AGREEMENT APPROVAL

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

IN WITNESS WHEREOF, MaineDOT and the City have executed this Agreement effective on the date last signed.

City of Bangor

Maine Department of Transportation

By: _____
Catherine M. Conlow, City Manager

By: _____
William A. Pulver, P.E., Director,
 Bureau of Project Development

Date: _____

Date: _____

Federal Funding Accountability and Transparency Act

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

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

- A) The total compensation and names of the top five officers if:
- More than 80% of the **City**'s annual gross revenues are from the U.S. Federal Government; and
 - Those revenues are greater than \$25 million annually; and
 - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).
- B) Legal name and DUNS[®] number on file with the Central Contractor Registration (CCR):

City of Bangor, Maine

Sign and Print Legal CCR Name

07-173-9692

DUNS[®] Number

Authorized Representative: _____
Catherine M. Conlow, City Manager

**The United States Department of Transportation (U.S. DOT)
FHWA STANDARD TITLE VI/NONDISCRIMINATION ASSURANCES**

DOT Order No. 1050.2A

The **City of Bangor** (herein referred to as the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The City of Bangor, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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

By signing this ASSURANCE, the Recipient also agrees to comply (and require any subrecipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

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

DATED 2-25-2015

By Catherine M. Conlow
Catherine M. Conlow, City Manager
City of Bangor

RECEIVED
MAR 04 2015

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**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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 on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



Assigned to Councilor

CITY OF BANGOR

(TITLE.) ORDER, Authorizing the Execution of Agreement for Maine Department of Transportation Local Project – WIN #018640.00, Resurfacing of a Portion of Union Street

ORDERED,

THAT: the City Manager is hereby authorized and directed to execute an agreement with the Maine Department of Transportation for the following:

An Agreement with the Maine Department of Transportation – Resurfacing of a Portion of Union Street, WIN# 018640.00

Copy of the agreement is attached.

COUNCIL ACTION

Item No. _____

Date: April 13, 2015

Item/Subject: ORDER, Authorizing Execution of Agreement for Maine Department of Transportation Local Project – WIN 018640.00, Resurfacing a Portion of Union Street

Responsible Department: Engineering

Commentary: This order would authorize the City Manager to execute a Local Project Agreement with the Maine Department of Transportation for design and construction work for a mill and fill treatment on a portion of Union Street (Route 222) starting at Griffin Road and ending at Vermont Avenue.

The Maine Department of Transportation has approved federal and state funds in an amount not to exceed \$830,503.00 which includes a Federal share of \$664,402.40 or 80% of construction costs, State share of \$83,050.30 or 10% of construction costs, and a City share of funding of \$83,050.30 or 10% of construction costs. As part of that project, the City would need to enter into a local project agreement with the Maine Department of Transportation which have been reviewed and recommended for approval by the Infrastructure Committee at its March 24, 2015 meeting.

John Theriault, City Engineer
Department Head

Manager's Comments:

City Manager

Associated Information: Councilor Order and Agreement

Budget Approval:

Finance Director

Legal Approval:

City Solicitor

Introduced for
 Passage CONSENT
 First Reading
 Referral

Page __ of __

**MAINE DEPARTMENT OF TRANSPORTATION
Locally Administered Project Agreement**

With the

City of Bangor

Regarding

Resurfacing of a portion of Union Street: WIN 018640.00

(MaineDOT Use Only)

| | |
|--|---|
| Total Project Amount: \$830,503.00 | MaineDOT WIN: 018640.00 |
| Federal Award Amount: \$664,402.40 (80%) | Federal Project Number: STP-1864(000) |
| State Match: \$83,050.30 (10%) | Federal Authorization Date: _____ |
| Municipal Match: \$83,050.30 (10%) | Sub-recipient's Vendor ID: VC1000007010 |
| Effective Date: _____ | Sub-recipient's DUNS® Number: 07-173-9692 |
| Expiration Date: _____ | CFDA #20.205: Highway Planning & Construction |

This subaward agreement for a federal-aid project is made between the Maine Department of Transportation, a Maine State Government agency headquartered at 24 Child Street in Augusta, Maine (“**MaineDOT**,”) and the **City of Bangor**, a municipal corporation and body politic with its principal offices at 73 Harlow Street in Bangor, Maine (“the **City**.”) **MaineDOT** and the **City** are collectively referred to as “the **Parties**.”

This Agreement contains the following attachments:

1. Federal Funding Accountability and Transparency Act (*signature required*);
2. Federal Title VI Assurances.

WHEREAS, the work described herein was selected for the **MaineDOT** 2015-2017 Work Plan by the Bangor Area Comprehensive Transportation System, the metropolitan planning organization for the Bangor Urbanized Area, with its administrative offices located at 12 Acme Road, Suite 102, in Brewer, Maine (“**BACTS**”); and

WHEREAS, **MaineDOT** approved the **City**'s request to administer the project at the local level.

NOW, in consideration of the foregoing, **MaineDOT** and the **City** agree as follows:

ARTICLE 1. PROJECT OVERVIEW

- A. **SCOPE OF WORK:** Preliminary engineering and construction work for a mill-and-fill treatment on 0.82 mile of Union Street (Route 222) starting at Griffin Road and ending at Vermont Avenue (“the **Project**.”) Any substantial change to this scope of work shall require approval from **BACTS** and **MaineDOT** to be eligible for federal and state funding.
- B. **FUNDING.** The estimated total cost of the **Project** is eight hundred thirty thousand five hundred three dollars (**\$830,503**) to be shared at the rates and terms described in Article 3.

- C. **ROLE OF CITY.** The **City** shall take the lead in developing the **Project** and assign a full-time municipal employee with certification from **MaineDOT** to be in responsible charge of the **Project**. At all times, this Local Project Administrator shall follow the policies and procedures in the latest edition of **MaineDOT's Local Project Administration Manual**.
- D. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to carry out the State's responsibilities regarding the **Project**. This person or his/her designee will have the authority to request design changes to meet applicable laws and design standards; accept or reject any invoice; review construction activities to ensure compliance with contract documents; and take all other action necessary to ensure the proper performance of this agreement.

ARTICLE 2. PROJECT DEVELOPMENT

- A. **AUTHORIZATION.** The **City** shall receive Authorization to Proceed from **MaineDOT** before starting work or executing a contract for services. All municipal costs incurred before such authorization is given shall be ineligible for reimbursement.
- B. **KICKOFF.** Before starting work, the **City** shall review with **MaineDOT's** Project Manager the scope of work, estimated cost, schedule, and legal requirements for the **Project**. If necessary, the **City** shall provide an updated schedule and cost estimate within a reasonable timeframe.
- C. **PROGRESS REPORTS.** The **City** shall provide **MaineDOT** with monthly progress reports for the duration of the **Project** listing tasks completed, any changes in staffing, and any issues that could affect the schedule.
- D. **CONSULTANT SERVICES.** The **City** may contract for consultant engineering services as necessary to develop and oversee the **Project**. In doing so, the **City** shall:
1. Use qualifications-based selection pursuant to federal regulation 23 CFR, Part 172.
 2. Obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
 3. Ensure that "Consultant General Conditions for Local Public Agencies" govern all work, including insertion of Form FHWA-1273 and Civil Rights Assurances into every contract.
 4. Obtain **MaineDOT's** written approval before modifying any contract. ***MaineDOT** reserves the right not to reimburse the **City** for work covered by a modification executed without prior approval or for work performed before the effective date of a modification.*
- E. **DESIGN.** All design plans, specifications, estimates and contract documents shall be developed in accordance with the latest versions of **MaineDOT's Highway Design Guide and Standard Specifications (2014)**, as follows:
1. The **City** shall submit a preliminary design report (PDR), if applicable, and the final plans, specifications and estimate (PS&E) package to **MaineDOT** for review and comment.
 2. The **City** shall address to **MaineDOT's** satisfaction any changes requested or concerns expressed before the **Project** may be advertised for construction.
 3. Advertising for construction bids or moving to the construction stage without **MaineDOT's** written authorization shall render the **Project** ineligible for federal and state funding.

- F. **QUALITY CONTROL.** The **City** shall be responsible for the quality of the design plans, specifications and estimates for the **Project** using a documented quality-control process. Acceptance of the final PS&E package by **MaineDOT** shall not relieve the **City** of responsibility for the quality of the engineering documents for the **Project**.
- G. **PUBLIC PARTICIPATION.** The **City** shall provide opportunity for the public and all abutters to learn about the **Project** and express concerns, using a public process that is appropriate for the scope of work and acceptable to the **MaineDOT** Project Manager. Documentation and a public process certification (Letter 16) shall be submitted to **MaineDOT** with the final PS&E package.
- H. **ENVIRONMENTAL PROCESS.** The **City** or its contracted consultant shall prepare and submit to **MaineDOT** all required environmental documents, including but not limited to Letter 11 and the National Environmental Policy Act (NEPA) checklist. **MaineDOT** will prepare and submit to the Federal Highway Administration all documentation required under NEPA.
- I. **PERMITS.** The **City** shall obtain all approvals, permits and licenses needed for the **Project**. Copies shall be submitted to **MaineDOT** with an environmental certification (Letter 12) with the final PS&E package.
- J. **UTILITIES.** The **City** shall coordinate the **Project** with all utilities and submit documentation to **MaineDOT** with a utility certification (Letter 13) with the final PS&E package. **MaineDOT's** revised Utility Accommodation Rules (October 2014) shall apply to any utility relocations.
- K. **RIGHT OF WAY.** If applicable, **MaineDOT** will acquire any rights necessary to construct and maintain the **Project**.
- L. **FORCE ACCOUNT.** If the **City** intends to construct the **Project** with its municipal work force or to furnish materials for the **Project**, the **City** shall obtain **MaineDOT's** written authorization before proceeding. If so authorized to use a "force account" process, the **City** shall comply with the applicable regulations – 23 CFR, Parts 635.201 to 635.205.
- M. **SOLICITATION OF BIDS.** Competitive bidding shall be used to hire a contractor unless a "force account" process is authorized. The **City** shall solicit for bids upon **MaineDOT's** written authorization in accordance with the final, approved plans and specifications as follows:
1. The **City** shall follow the procedures in **MaineDOT's** "Standard Specifications" and adhere to all applicable federal requirements, unless otherwise authorized by **MaineDOT**.
 2. The **City** and **MaineDOT** shall have the right to accept or reject the bids submitted.
 3. The **City** shall not award a contract without **MaineDOT's** written approval.
- N. **CONTRACT AWARD.** Upon **MaineDOT's** written approval, the **City** shall award a construction contract to the lowest responsive, responsible bidder as follows:
1. The **City** shall administer the contract for the duration of the **Project**.
 2. Form FHWA-1273 shall be physically incorporated into the contract.
 3. The contract shall specify that the **Project** comply with the latest version of **MaineDOT's** "Standard Specifications" (November 2014) and applicable special provisions.

- O. CONSTRUCTION. The **City** shall hold a pre-construction meeting with **MaineDOT**, the contractor, utilities and any other parties involved in or affected by the construction process. During the work, the **City** shall provide the supervision, inspection and documentation necessary to ensure that the **Project** is completed to **MaineDOT**'s satisfaction in accordance with the plans, specifications and provisions of the contract, as follows:
1. The **City** shall use procedures acceptable to **MaineDOT** to document the quantity and quality of all construction-related work. The **City** shall provide monthly progress reports and shall retain all documentation as provided under Article 5.A.
 2. The **City** or its contracted consultant shall be responsible for coordinating all materials testing necessary to meet the Minimum Testing Requirements for the **Project**, in compliance with 23 CFR, Part 637, "Quality Assurance Procedures for Construction." Test results shall be provided to **MaineDOT** upon request.
 3. Any contract modification shall be submitted to **MaineDOT** for review and comment before it is executed. ***MaineDOT** reserves the right not to reimburse the **City** for work associated with a contract modification executed without **MaineDOT**'s prior review.*
 4. Traffic in work zones shall be controlled in accordance with Part VI of the federal Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).
 5. Upon completion, the **City** shall provide compliance certification that the **Project** was constructed, quantities were measured and documented, and materials were tested in accordance with the approved plans, specifications and provisions of the contract.
- P. MAINEDOT OVERSIGHT. **MaineDOT** may inspect construction activities and documentation – and any test materials used – to ensure compliance with the **Project** specifications and construction contract. **MaineDOT** may reject work or materials out of compliance and may withhold reimbursement to the **City** for any such work or materials.

ARTICLE 3. FINANCIAL PROVISIONS

- A. MAINEDOT SHARE. **MaineDOT**, using federal and state resources programmed by **BACTS**, will reimburse the **City** for ninety percent (**90%**) of **Project** expenditures incurred that are deemed to be eligible for such funding, up to a maximum reimbursement of seven hundred forty-seven thousand four hundred fifty-two dollars and seventy cents (**\$747,452.70**.)
- B. LOCAL SHARE. The **City** shall share in all **Project** expenditures eligible for federal and state funding at the rate of ten percent (**10%**), said share estimated to be eighty-three thousand fifty dollars and thirty cents (**\$83,050.30**.) The **City** shall be responsible for one hundred percent (100%) of any costs deemed ineligible for reimbursement and all costs exceeding the maximum amount of this Agreement as outlined in Article 1.B, unless otherwise approved in writing by **BACTS** and **MaineDOT**.
- C. MAINEDOT COSTS. All costs incurred by **MaineDOT** staff in developing and overseeing the **Project** shall be paid for out of the **Project**, including but not limited to design reviews, environmental work, utility support, right-of-way support, and construction engineering. The **City** shall share in these costs commensurate with its overall portion of the **Project**. **MaineDOT** will reconcile these costs upon completion of the **Project** and shall deduct the **City**'s share from the final invoice payment to the **City**.

- D. REIMBURSEMENT. The **City** may invoice **MaineDOT** periodically for the federal and state shares of **Project** expenditures deemed eligible for such funding, up to the maximum in Article 3.A. Invoices shall be submitted no more than monthly, subject to these conditions:
1. Invoices shall be submitted on the **City**'s letterhead and reference WIN 018640.00.
 2. Each invoice shall be accompanied by a progress report in accordance with Article 2.C.
 3. Each invoice shall contain an itemized account of expenditures incurred during the period covered by the invoice, consistent with the approved budget for the **Project**. Backup documentation and proof of payment made shall accompany each invoice.
 4. Each invoice shall have an accumulative total and a breakdown of **MaineDOT**'s and the **City**'s shares of **Project** costs.
 5. Each invoice shall include a certification from the **City** that all amounts claimed are correct, due and not claimed previously.
 6. Payment of the final invoice shall be subject to a final inspection of the completed **Project** to determine the acceptability of the work.
 7. **MaineDOT** may withhold reimbursements to the **City** to recover previous payments for items subsequently deemed to be ineligible for federal or state funding.
- E. REPAYMENT. If the **City** withdraws its support for the **Project**, leading **MaineDOT** to cancel the **Project** and terminate this Agreement for cause, **MaineDOT** reserves the right to require the **City** to refund all reimbursements made and to repay **MaineDOT** fully for all **Project** costs incurred. All federal and state funds returned to **MaineDOT** by the **City**, as well as all federal and state funds remaining in the **Project**, shall be made available to **BACTS** for reprogramming once the **Project** is closed out.
- F. REMAINING FUNDS. Any federal and state funds remaining in the **Project** after payment of the final invoice from the **City** shall be made available to **BACTS** for reprogramming.

ARTICLE 4. PROJECT RECORDS AND AUDIT

- A. **Project** records shall consist of all printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all **Project** records for at least **four (4) years** from the date of **MaineDOT**'s acceptance of the final invoice for the **Project**. If any litigation, claim, negotiation or audit has begun before the end of this four (4) year period, all **Project** records shall be kept at least until all action and resolution of all issues arising from it are complete. All records shall be provided to **MaineDOT** upon request after completion or termination of the **Project**.
- B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the U.S. Government and the State of Maine to inspect and audit **Project** documents at reasonable times. Copies shall be furnished at no cost.
- C. The **City** shall keep **Project** records in such form as may be easily audited. Audits shall be performed in accordance with generally accepted government auditing standards and Title 2 CFR, Part 200, Subpart F - "Audit Requirements."

ARTICLE 5. GENERAL PROVISIONS

- A. Governing Laws. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement will be subject to applicable federal laws and regulations, including but not limited to Title 23 in the United States Code (USC) for statutory law and Title 23 in the Code of Federal Regulations (CFR) for administrative law, as well as Title 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- B. Indemnification. To the extent permitted by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officials, employees, agents, consultants or contractors. Nothing herein 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 provision shall survive the termination or expiration of this Agreement.*
- C. Confidentiality. Information pertaining to engineering estimates of construction costs shall be kept confidential in accordance with the provisions of Maine law (23 MRSA, Section 63.)
- D. Flow Down. Contracts between the **City** and all consultants, contractors or other third parties shall contain or incorporate by reference all applicable provisions of this Agreement.
- E. Independent Capacity. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.
- F. Equal Employment Opportunity. The **City** shall adhere to all applicable EEO requirements in the administration of the **Project**, as follows:
1. The **City** shall not discriminate against any employee or applicant for employment *relating specifically to work under this Agreement* because of race, color, religious creed, sex, national origin, ancestry, age or physical handicap unless related to a bona fide occupational qualification. The **City** shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age or physical handicap during any period of employment under this Agreement. Such action shall include, but not be limited to: employment, upgrading, demotions, transfers, recruitment, layoffs or terminations, rates of pay or other forms of compensation and selection for all forms of training and apprenticeships. The **City** shall post prominently in places readily available to all employees and applicants for such employment under this Agreement notices setting forth the provisions of this paragraph.
 2. In all solicitations or advertising for employees relating to work done under this Agreement, the **City** shall state that all qualified applicants shall receive consideration for employment regardless of race, color, religious creed, sex, national origin, ancestry, age or physical handicap.
 3. The **City** shall send to each representative of any of its employees covered by a collective-bargaining agreement – or any other contract or understanding under which labor or services are to be furnished under this Agreement – a notice advising of the **City's** commitment under this Article and shall post copies prominently in places readily available to all such employees and applicants for employment.

4. The **City** shall include all of the foregoing equal employment opportunity provisions under this Article in any contract for services or work for the **Project** so that such provisions are binding upon each consultant and contractor – with the exception of any contract for the purchase of standard commercial supplies or raw materials. To the maximum extent feasible, the **City** or any of its consultants and contractors shall list all suitable employment openings with the Maine Job Service. *This provision shall not apply to employment openings that the **City** or any of its consultants and contractors propose to fill from within their own organizations.*
- G. **Set-Off.** **MaineDOT** shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, without being limited to, the State of Maine’s option to withhold for purposes of set-off any payment due to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract commencing before the effective date of this Agreement. **MaineDOT** shall exercise its set-off rights in accordance with standard state practices including – in case of set-off pursuant to an audit – the finalization of the audit by **MaineDOT** or the State Controller.
- H. **No Assignment Without Approval.** The **City** shall not assign this Agreement to a third party or dispose of this Agreement without specific written consent from **MaineDOT**. In no case shall such action release the **City** from liability under this Agreement.
- I. **Binding Effect.** The **City** and **MaineDOT** shall be bound by the terms of this Agreement. This provision shall apply to the executors of this Agreement, their successors, administrators and legal representatives.

ARTICLE 6. TERMINATION

- A. **FOR CAUSE.** **MaineDOT** may terminate this Agreement for cause in the event of default as defined in Section 6.B below. The **City** will have a cure period of fourteen (14) calendar days after receiving a Notice of Default. If the **City** fails to make a good-faith effort to correct all defaults within the cure period, **MaineDOT** may terminate this Agreement upon written Notice of Termination for Cause, with the following conditions:
 1. The **City** and all consultants and contractors working on the **Project** shall cease work immediately – except for work required to protect public health and safety – and turn over to **MaineDOT** all **Project** records within thirty (30) days of the termination date.
 2. If termination is the result of the **City**’s failure to correct any occurrence of default, **MaineDOT** reserves the right to recover from the **City** all reimbursements made in accordance with Article 3, “Financial Provisions.”
 3. All federal and state funds remaining in the terminated **Project**, as well as any federal and state funds recovered from the **City**, shall be made available to **BACTS** for reprogramming in accordance with Article 3.F, “Remaining Funds.”
- B. **GROUNDS FOR DEFAULT.** The **City** shall receive a Notice of Default if the **City**:
 1. Takes any action without approval from **MaineDOT** that leads to cancelation of the **Project** or the loss of eligibility of the **Project** for federal or state funding.
 2. Uses **Project** funds for a purpose other than what is authorized by this Agreement.

3. Misrepresents or falsifies of any claim for reimbursement.
4. Fails to meet standards of performance outlined in this Agreement.
5. Breaches any material provision of this Agreement.

C. FOR CONVENIENCE. This Agreement may be terminated for convenience by mutual consent of the **Parties** for any reason not defined as “default.” **MaineDOT** shall notify the **City** through a written Notice of Termination for Convenience, with the following conditions:

1. If termination is other than for default by the **City**, the **City** shall be reimbursed for federally eligible work or service performed until the effective termination date. The **City’s** share of costs incurred by **MaineDOT** staff in the development and oversight of the **Project** shall be deducted from amounts due to the **City** in accordance with Article 3.C, “MaineDOT Costs.”
2. All **Project** records shall be turned over to **MaineDOT** within thirty (30) days of the date of the Notice of Termination for Convenience.
3. All federal and state funds remaining in the **Project** shall be made available to **BACTS** for reprogramming once the **Project** is closed out.

ARTICLE 7. EXPIRATION

All provisions of this Agreement – except for Article 4.A (records), Article 5.B (indemnification) and Article 5.C (confidentiality) – shall expire upon satisfactory completion of the terms of this Agreement or **four (4) years** from the final day of the month in which this Agreement was fully executed, whichever occurs first. The provisions of Article 5.B and Article 5.C shall remain in full effect until terminated in writing by the **Parties** or negated by law.

ARTICLE 8. DEBARMENT

- A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its officers, agents and employees associated with the **Project** are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency. If the **City** is unable to certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or any of its officers, agents and employees associated with the **Project** is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency.
- B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state agency.
- C. The **City** agrees that if it contracts with an outside entity, that entity and its principals shall certify that they:
1. Have not within a 3-year period preceding the date of such contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with the following: a.) obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; b.) violating federal or state antitrust statutes; and c.) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

2. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1 of this section; and
3. Have not within a 3-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default.

ARTICLE 9. CONFLICT OF INTEREST

By signing this Agreement, the **City** agrees that it shall not enter into a contract with any outside entity that has a financial or other interest in the **Project** or in its outcome, other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the project or related matters; and c.) any interest in real property acquired for the **Project** unless such real property interest is openly disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 10. AGREEMENT APPROVAL

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

IN WITNESS WHEREOF, MaineDOT and the City have executed this Agreement effective on the date last signed.

City of Bangor

Maine Department of Transportation

By: _____
Catherine M. Conlow, City Manager

By: _____
William A. Pulver, P.E., Director,
 Bureau of Project Development

Date: _____

Date: _____

Federal Funding Accountability and Transparency Act

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

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

- A) The total compensation and names of the top five officers if:
- More than 80% of the **City**'s annual gross revenues are from the U.S. Federal Government; and
 - Those revenues are greater than \$25 million annually; and
 - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).
- B) Legal name and DUNS[®] number on file with the Central Contractor Registration (CCR):

City of Bangor, Maine

Sign and Print Legal CCR Name

07-173-9692

DUNS[®] Number

Authorized Representative: _____
Catherine M. Conlow, City Manager

**The United States Department of Transportation (U.S. DOT)
FHWA STANDARD TITLE VI/NONDISCRIMINATION ASSURANCES**

DOT Order No. 1050.2A

The **City of Bangor** (herein referred to as the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The City of Bangor, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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

By signing this ASSURANCE, the Recipient also agrees to comply (and require any subrecipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

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

DATED 2-25-2015

By Catherine M. Conlow
Catherine M. Conlow, City Manager
City of Bangor

RECEIVED
MAR 04 2015

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**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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 on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



Assigned to Councilor

CITY OF BANGOR

(TITLE.) ORDER, Authorizing the Execution of Agreement for Maine Department of Transportation Local Project – WIN #018642.00, Resurfacing of a Portion of Union Street

ORDERED,

THAT: the City Manager is hereby authorized and directed to execute an agreement with the Maine Department of Transportation for the following:

An Agreement with the Maine Department of Transportation – Resurfacing of a Portion of Union Street, WIN# 018642.00

Copy of the agreement is attached.

**MAINE DEPARTMENT OF TRANSPORTATION
Locally Administered Project Agreement**

With the

City of Bangor

Regarding

Resurfacing of a portion of Union Street: WIN 018642.00

(MaineDOT Use Only)

| | |
|--|---|
| Total Project Amount: \$467,964.00 | MaineDOT WIN: 018642.00 |
| Federal Award Amount: \$374,371.20 (80%) | Federal Project Number: NHPP-1864(200) |
| State Match: \$46,796.40 (10%) | Federal Authorization Date: _____ |
| Municipal Match: \$46,796.40 (10%) | Sub-recipient's Vendor ID: VC1000007010 |
| Effective Date: _____ | Sub-recipient's DUNS® Number: 07-173-9692 |
| Expiration Date: _____ | CFDA #20.205: Highway Planning & Construction |

This subaward agreement for a federal-aid project is between the Maine Department of Transportation, a Maine State Government agency headquartered at 24 Child Street in Augusta, Maine (“**MaineDOT**,”) and the **City of Bangor**, a municipal corporation and body politic with its principal offices at 73 Harlow Street in Bangor, Maine (“the **City**.”) **MaineDOT** and the **City** are collectively referred to as “the **Parties**.”

This Agreement contains the following attachments:

1. Federal Funding Accountability and Transparency Act (*signature required*);
2. Federal Title VI Assurances.

WHEREAS, the work described herein was selected for the **MaineDOT** 2015-2017 Work Plan by the Bangor Area Comprehensive Transportation System, the metropolitan planning organization for the Bangor Urbanized Area, with its administrative offices located at 12 Acme Road, Suite 102, in Brewer, Maine (“**BACTS**”); and

WHEREAS, **MaineDOT** approved the **City**'s request to administer the project at the local level.

NOW, in consideration of the foregoing, **MaineDOT** and the **City** agree as follows:

ARTICLE 1. PROJECT OVERVIEW

- A. **SCOPE OF WORK:** Preliminary engineering and construction work for a mill-and-fill treatment on a portion of Union Street (Route 222), starting at Vermont Avenue and extending easterly 0.43 of one mile (“the **Project**.”) Any substantial change to this scope of work shall require approval from **BACTS** and **MaineDOT** to be eligible for federal and state funding.
- B. **FUNDING.** The estimated total cost of the **Project** is four hundred sixty-seven thousand nine hundred sixty-four dollars (**\$467,964**) to be shared at the rates and terms described in Article 3.

- C. **ROLE OF CITY.** The **City** shall take the lead in developing the **Project** and assign a full-time municipal employee with certification from **MaineDOT** to be in responsible charge of the **Project**. At all times, this Local Project Administrator shall follow the policies and procedures in the latest edition of **MaineDOT's Local Project Administration Manual**.
- D. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to carry out the State's responsibilities regarding the **Project**. This person or his/her designee will have the authority to request design changes to meet applicable laws and design standards; accept or reject any invoice; review construction activities to ensure compliance with contract documents; and take all other action necessary to ensure the proper performance of this agreement.

ARTICLE 2. PROJECT DEVELOPMENT

- A. **AUTHORIZATION.** The **City** shall receive Authorization to Proceed from **MaineDOT** before starting work or executing a contract for services. All municipal costs incurred before such authorization is given shall be ineligible for reimbursement.
- B. **KICKOFF.** Before starting work, the **City** shall review with **MaineDOT's** Project Manager the scope of work, estimated cost, schedule, and legal requirements for the **Project**. If necessary, the **City** shall provide an updated schedule and cost estimate within a reasonable timeframe.
- C. **PROGRESS REPORTS.** The **City** shall provide **MaineDOT** with monthly progress reports for the duration of the **Project** listing tasks completed, any changes in staffing, and any issues that could affect the schedule.
- D. **CONSULTANT SERVICES.** The **City** may contract for consultant engineering services as necessary to develop and oversee the **Project**. In doing so, the **City** shall:
1. Use qualifications-based selection pursuant to federal regulation 23 CFR, Part 172.
 2. Obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
 3. Ensure that "Consultant General Conditions for Local Public Agencies" govern all work, including insertion of Form FHWA-1273 and Civil Rights Assurances into every contract.
 4. Obtain **MaineDOT's** written approval before modifying any contract. ***MaineDOT** reserves the right not to reimburse the **City** for work covered by a modification executed without prior approval or for work performed before the effective date of a modification.*
- E. **DESIGN.** All design plans, specifications, estimates and contract documents shall be developed in accordance with the latest versions of **MaineDOT's Highway Design Guide and Standard Specifications (2014)**, as follows:
1. The **City** shall submit a preliminary design report (PDR), if applicable, and the final plans, specifications and estimate (PS&E) package to **MaineDOT** for review and comment.
 2. The **City** shall address to **MaineDOT's** satisfaction any changes requested or concerns expressed before the **Project** may be advertised for construction.
 3. Advertising for construction bids or moving to the construction stage without **MaineDOT's** written authorization shall render the **Project** ineligible for federal and state funding.

- F. **QUALITY CONTROL.** The **City** shall be responsible for the quality of the design plans, specifications and estimates for the **Project** using a documented quality-control process. Acceptance of the final PS&E package by **MaineDOT** shall not relieve the **City** of responsibility for the quality of the engineering documents for the **Project**.
- G. **PUBLIC PARTICIPATION.** The **City** shall provide opportunity for the public and all abutters to learn about the **Project** and express concerns, using a public process that is appropriate for the scope of work and acceptable to the **MaineDOT** Project Manager. Documentation and a public process certification (Letter 16) shall be submitted to **MaineDOT** with the final PS&E package.
- H. **ENVIRONMENTAL PROCESS.** The **City** or its contracted consultant shall prepare and submit to **MaineDOT** all required environmental documents, including but not limited to Letter 11 and the National Environmental Policy Act (NEPA) checklist. **MaineDOT** will prepare and submit to the Federal Highway Administration all documentation required under NEPA.
- I. **PERMITS.** The **City** shall obtain all approvals, permits and licenses needed for the **Project**. Copies shall be submitted to **MaineDOT** with an environmental certification (Letter 12) with the final PS&E package.
- J. **UTILITIES.** The **City** shall coordinate the **Project** with all utilities and submit documentation to **MaineDOT** with a utility certification (Letter 13) with the final PS&E package. **MaineDOT's** revised Utility Accommodation Rules (October 2014) shall apply to any utility relocations.
- K. **RIGHT OF WAY.** If applicable, **MaineDOT** will acquire any rights necessary to construct and maintain the **Project**.
- L. **FORCE ACCOUNT.** If the **City** intends to construct the **Project** with its municipal work force or to furnish materials for the **Project**, the **City** shall obtain **MaineDOT's** written authorization before proceeding. If so authorized to use a "force account" process, the **City** shall comply with the applicable regulations – 23 CFR, Parts 635.201 to 635.205.
- M. **SOLICITATION OF BIDS.** Competitive bidding shall be used to hire a contractor unless a "force account" process is authorized. The **City** shall solicit for bids upon **MaineDOT's** written authorization in accordance with the final, approved plans and specifications as follows:
1. The **City** shall follow the procedures in **MaineDOT's** "Standard Specifications" and adhere to all applicable federal requirements, unless otherwise authorized by **MaineDOT**.
 2. The **City** and **MaineDOT** shall have the right to accept or reject the bids submitted.
 3. The **City** shall not award a contract without **MaineDOT's** written approval.
- N. **CONTRACT AWARD.** Upon **MaineDOT's** written approval, the **City** shall award a construction contract to the lowest responsive, responsible bidder as follows:
1. The **City** shall administer the contract for the duration of the **Project**.
 2. Form FHWA-1273 shall be physically incorporated into the contract.
 3. The contract shall specify that the **Project** comply with the latest version of **MaineDOT's** "Standard Specifications" (November 2014) and applicable special provisions.

- O. CONSTRUCTION. The **City** shall hold a pre-construction meeting with **MaineDOT**, the contractor, utilities and any other parties involved in or affected by the construction process. During the work, the **City** shall provide the supervision, inspection and documentation necessary to ensure that the **Project** is completed to **MaineDOT**'s satisfaction in accordance with the plans, specifications and provisions of the contract, as follows:
1. The **City** shall use procedures acceptable to **MaineDOT** to document the quantity and quality of all construction-related work. The **City** shall provide monthly progress reports and shall retain all documentation as provided under Article 5.A.
 2. The **City** or its contracted consultant shall be responsible for coordinating all materials testing necessary to meet the Minimum Testing Requirements for the **Project**, in compliance with 23 CFR, Part 637, "Quality Assurance Procedures for Construction." Test results shall be provided to **MaineDOT** upon request.
 3. Any contract modification shall be submitted to **MaineDOT** for review and comment before it is executed. ***MaineDOT** reserves the right not to reimburse the **City** for work associated with a contract modification executed without **MaineDOT**'s prior review.*
 4. Traffic in work zones shall be controlled in accordance with Part VI of the federal Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).
 5. Upon completion, the **City** shall provide compliance certification that the **Project** was constructed, quantities were measured and documented, and materials were tested in accordance with the approved plans, specifications and provisions of the contract.
- P. MAINEDOT OVERSIGHT. **MaineDOT** may inspect construction activities and documentation – and any test materials used – to ensure compliance with the **Project** specifications and construction contract. **MaineDOT** may reject work or materials out of compliance and may withhold reimbursement to the **City** for any such work or materials.

ARTICLE 3. FINANCIAL PROVISIONS

- A. MAINEDOT SHARE. **MaineDOT**, using federal and state resources programmed by **BACTS**, will reimburse the **City** for ninety percent (**90%**) of **Project** expenditures incurred that are deemed to be eligible for such funding, up to a maximum reimbursement of four hundred twenty-one thousand one hundred sixty-seven dollars and sixty cents (**\$421,167.60**.)
- B. LOCAL SHARE. The **City** shall share in all **Project** expenditures eligible for federal and state funding at the rate of ten percent (**10%**), said share estimated to be forty-six thousand seven hundred ninety-six dollars and forty cents (**\$46,796.40**.) The **City** shall be responsible for one hundred percent (100%) of any costs deemed ineligible for reimbursement and all costs exceeding the maximum amount of this Agreement as outlined in Article 1.B, unless otherwise approved in writing by **BACTS** and **MaineDOT**.
- C. MAINEDOT COSTS. All costs incurred by **MaineDOT** staff in developing and overseeing the **Project** shall be paid for out of the **Project**, including but not limited to design reviews, environmental work, utility support, right-of-way support, and construction engineering. The **City** shall share in these costs commensurate with its overall portion of the **Project**. **MaineDOT** will reconcile these costs upon completion of the **Project** and shall deduct the **City**'s share from the final invoice payment to the **City**.

- D. REIMBURSEMENT. The **City** may invoice **MaineDOT** periodically for the federal and state shares of **Project** expenditures deemed eligible for such funding, up to the maximum in Article 3.A. Invoices shall be submitted no more than monthly, subject to these conditions:
1. Invoices shall be submitted on the **City**'s letterhead and reference WIN 018642.00.
 2. Each invoice shall be accompanied by a progress report in accordance with Article 2.C.
 3. Each invoice shall contain an itemized account of expenditures incurred during the period covered by the invoice, consistent with the approved budget for the **Project**. Backup documentation and proof of payment made shall accompany each invoice.
 4. Each invoice shall have an accumulative total and a breakdown of **MaineDOT**'s and the **City**'s shares of **Project** costs.
 5. Each invoice shall include a certification from the **City** that all amounts claimed are correct, due and not claimed previously.
 6. Payment of the final invoice shall be subject to a final inspection of the completed **Project** to determine the acceptability of the work.
 7. **MaineDOT** may withhold reimbursements to the **City** to recover previous payments for items subsequently deemed to be ineligible for federal or state funding.
- E. REPAYMENT. If the **City** withdraws its support for the **Project**, leading **MaineDOT** to cancel the **Project** and terminate this Agreement for cause, **MaineDOT** reserves the right to require the **City** to refund all reimbursements made and to repay **MaineDOT** fully for all **Project** costs incurred. All federal and state funds returned to **MaineDOT** by the **City**, as well as all federal and state funds remaining in the **Project**, shall be made available to **BACTS** for reprogramming once the **Project** is closed out.
- F. REMAINING FUNDS. Any federal and state funds remaining in the **Project** after payment of the final invoice from the **City** shall be made available to **BACTS** for reprogramming.

ARTICLE 4. PROJECT RECORDS AND AUDIT

- A. **Project** records shall consist of all printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all **Project** records for at least **four (4) years** from the date of **MaineDOT**'s acceptance of the final invoice for the **Project**. If any litigation, claim, negotiation or audit has begun before the end of this four (4) year period, all **Project** records shall be kept at least until all action and resolution of all issues arising from it are complete. All records shall be provided to **MaineDOT** upon request after completion or termination of the **Project**.
- B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the U.S. Government and the State of Maine to inspect and audit **Project** documents at reasonable times. Copies shall be furnished at no cost.
- C. The **City** shall keep **Project** records in such form as may be easily audited. Audits shall be performed in accordance with generally accepted government auditing standards and Title 2 CFR, Part 200, Subpart F - "Audit Requirements."

ARTICLE 5. GENERAL PROVISIONS

- A. Governing Laws. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement will be subject to applicable federal laws and regulations, including but not limited to Title 23 in the United States Code (USC) for statutory law and Title 23 in the Code of Federal Regulations (CFR) for administrative law, as well as Title 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- B. Indemnification. To the extent permitted by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officials, employees, agents, consultants or contractors. Nothing herein 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 provision shall survive the termination or expiration of this Agreement.*
- C. Confidentiality. Information pertaining to engineering estimates of construction costs shall be kept confidential in accordance with the provisions of Maine law (23 MRSA, Section 63.)
- D. Flow Down. Contracts between the **City** and all consultants, contractors or other third parties shall contain or incorporate by reference all applicable provisions of this Agreement.
- E. Independent Capacity. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.
- F. Equal Employment Opportunity. The **City** shall adhere to all applicable EEO requirements in the administration of the **Project**, as follows:
1. The **City** shall not discriminate against any employee or applicant for employment *relating specifically to work under this Agreement* because of race, color, religious creed, sex, national origin, ancestry, age or physical handicap unless related to a bona fide occupational qualification. The **City** shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age or physical handicap during any period of employment under this Agreement. Such action shall include, but not be limited to: employment, upgrading, demotions, transfers, recruitment, layoffs or terminations, rates of pay or other forms of compensation and selection for all forms of training and apprenticeships. The **City** shall post prominently in places readily available to all employees and applicants for such employment under this Agreement notices setting forth the provisions of this paragraph.
 2. In all solicitations or advertising for employees relating to work done under this Agreement, the **City** shall state that all qualified applicants shall receive consideration for employment regardless of race, color, religious creed, sex, national origin, ancestry, age or physical handicap.
 3. The **City** shall send to each representative of any of its employees covered by a collective-bargaining agreement – or any other contract or understanding under which labor or services are to be furnished under this Agreement – a notice advising of the **City's** commitment under this Article and shall post copies prominently in places readily available to all such employees and applicants for employment.

4. The **City** shall include all of the foregoing equal employment opportunity provisions under this Article in any contract for services or work for the **Project** so that such provisions are binding upon each consultant and contractor – with the exception of any contract for the purchase of standard commercial supplies or raw materials. To the maximum extent feasible, the **City** or any of its consultants and contractors shall list all suitable employment openings with the Maine Job Service. *This provision shall not apply to employment openings that the **City** or any of its consultants and contractors propose to fill from within their own organizations.*
- G. **Set-Off.** **MaineDOT** shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, without being limited to, the State of Maine’s option to withhold for purposes of set-off any payment due to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract commencing before the effective date of this Agreement. **MaineDOT** shall exercise its set-off rights in accordance with standard state practices including – in case of set-off pursuant to an audit – the finalization of the audit by **MaineDOT** or the State Controller.
- H. **No Assignment Without Approval.** The **City** shall not assign this Agreement to a third party or dispose of this Agreement without specific written consent from **MaineDOT**. In no case shall such action release the **City** from liability under this Agreement.
- I. **Binding Effect.** The **City** and **MaineDOT** shall be bound by the terms of this Agreement. This provision shall apply to the executors of this Agreement, their successors, administrators and legal representatives.

ARTICLE 6. TERMINATION

- A. **FOR CAUSE.** **MaineDOT** may terminate this Agreement for cause in the event of default as defined in Section 6.B below. The **City** will have a cure period of fourteen (14) calendar days after receiving a Notice of Default. If the **City** fails to make a good-faith effort to correct all defaults within the cure period, **MaineDOT** may terminate this Agreement upon written Notice of Termination for Cause, with the following conditions:
 1. The **City** and all consultants and contractors working on the **Project** shall cease work immediately – except for work required to protect public health and safety – and turn over to **MaineDOT** all **Project** records within thirty (30) days of the termination date.
 2. If termination is the result of the **City**’s failure to correct any occurrence of default, **MaineDOT** reserves the right to recover from the **City** all reimbursements made in accordance with Article 3, “Financial Provisions.”
 3. All federal and state funds remaining in the terminated **Project**, as well as any federal and state funds recovered from the **City**, shall be made available to **BACTS** for reprogramming in accordance with Article 3.F, “Remaining Funds.”
- B. **GROUNDS FOR DEFAULT.** The **City** shall receive a Notice of Default if the **City**:
 1. Takes any action without approval from **MaineDOT** that leads to cancelation of the **Project** or the loss of eligibility of the **Project** for federal or state funding.
 2. Uses **Project** funds for a purpose other than what is authorized by this Agreement.

3. Misrepresents or falsifies of any claim for reimbursement.
 4. Fails to meet standards of performance outlined in this Agreement.
 5. Breaches any material provision of this Agreement.
- C. FOR CONVENIENCE. This Agreement may be terminated for convenience by mutual consent of the **Parties** for any reason not defined as “default.” **MaineDOT** shall notify the **City** through a written Notice of Termination for Convenience, with the following conditions:
1. If termination is other than for default by the **City**, the **City** shall be reimbursed for federally eligible work or service performed until the effective termination date. The **City’s** share of costs incurred by **MaineDOT** staff in the development and oversight of the **Project** shall be deducted from amounts due to the **City** in accordance with Article 3.C, “MaineDOT Costs.”
 2. All **Project** records shall be turned over to **MaineDOT** within thirty (30) days of the date of the Notice of Termination for Convenience.
 3. All federal and state funds remaining in the **Project** shall be made available to **BACTS** for reprogramming once the **Project** is closed out.

ARTICLE 7. EXPIRATION

All provisions of this Agreement – except for Article 4.A (records), Article 5.B (indemnification) and Article 5.C (confidentiality) – shall expire upon satisfactory completion of the terms of this Agreement or **four (4) years** from the final day of the month in which this Agreement was fully executed, whichever occurs first. The provisions of Article 5.B and Article 5.C shall remain in full effect until terminated in writing by the **Parties** or negated by law.

ARTICLE 8. DEBARMENT

- A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its officers, agents and employees associated with the **Project** are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency. If the **City** is unable to certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or any of its officers, agents and employees associated with the **Project** is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency.
- B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state agency.
- C. The **City** agrees that if it contracts with an outside entity, that entity and its principals shall certify that they:
1. Have not within a 3-year period preceding the date of such contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with the following: a.) obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; b.) violating federal or state antitrust statutes; and c.) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

2. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1 of this section; and
3. Have not within a 3-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default.

ARTICLE 9. CONFLICT OF INTEREST

By signing this Agreement, the **City** agrees that it shall not enter into a contract with any outside entity that has a financial or other interest in the **Project** or in its outcome, other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the project or related matters; and c.) any interest in real property acquired for the **Project** unless such real property interest is openly disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 10. AGREEMENT APPROVAL

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

IN WITNESS WHEREOF, MaineDOT and the City have executed this Agreement effective on the date last signed.

City of Bangor

Maine Department of Transportation

By: _____
Catherine M. Conlow, City Manager

By: _____
William A. Pulver, P.E., Director,
 Bureau of Project Development

Date: _____

Date: _____

Federal Funding Accountability and Transparency Act

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

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

- A) The total compensation and names of the top five officers if:
- More than 80% of the **City**'s annual gross revenues are from the U.S. Federal Government; and
 - Those revenues are greater than \$25 million annually; and
 - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).
- B) Legal name and DUNS[®] number on file with the Central Contractor Registration (CCR):

City of Bangor, Maine

07-173-9692

Sign and Print Legal CCR Name

DUNS[®] Number

Authorized Representative: _____
Catherine M. Conlow, City Manager

**The United States Department of Transportation (U.S. DOT)
FHWA STANDARD TITLE VI/NONDISCRIMINATION ASSURANCES**

DOT Order No. 1050.2A

The **City of Bangor** (herein referred to as the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The City of Bangor, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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

By signing this ASSURANCE, the Recipient also agrees to comply (and require any subrecipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

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

DATED 2-25-2015

By Catherine M. Conlow
Catherine M. Conlow, City Manager
City of Bangor

RECEIVED
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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**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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 on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

COUNCIL ACTION

Item No. _____

Date: April 13, 2015

Item/Subject: ORDER, Authorizing Execution of Agreement for Maine Department of Transportation Local Project – WIN 018642.00, Resurfacing a Portion of Union Street

Responsible Department: Engineering

Commentary: This order would authorize the City Manager to execute a Local Project Agreement with the Maine Department of Transportation for design and construction work for a mill and fill treatment on a portion of Union Street (Route 222) starting at Vermont Avenue and extending easterly 0.43 of one mile.

The Maine Department of Transportation has approved federal and state funds in an amount not to exceed \$467,964.00 which includes a Federal share of \$374,371.20 or 80% of construction costs, State share of \$46,796.40 or 10% of construction costs, and a City share of funding of \$46,796.40 or 10% of construction costs. As part of that project, the City would need to enter into a local project agreement with the Maine Department of Transportation which have been reviewed and recommended for approval by the Infrastructure Committee at its March 24, 2015 meeting.

John Theriault, City Engineer
Department Head

Manager's Comments:

City Manager

Associated Information: Councilor Order and Agreement

Budget Approval:

Finance Director

Legal Approval:

City Solicitor

Introduced for

- Passage CONSENT
- First Reading
- Referral

Page __ of __



Assigned to Councilor

CITY OF BANGOR

(TITLE.) ORDER, Authorizing the Execution of Agreement for Maine Department of Transportation Local Project – WIN #018645.00, Independence Street and Water Street Traffic Signal Improvements

ORDERED,

THAT: the City Manager is hereby authorized and directed to execute an agreement with the Maine Department of Transportation for the following:

An Agreement with the Maine Department of Transportation – Independence Street and Water Street Traffic Signal Improvements, WIN# 018645.00

Copy of the agreement is attached.

COUNCIL ACTION

Item No. _____

Date: April 13, 2015

Item/Subject: ORDER, Authorizing Execution of Agreement for Maine Department of Transportation Local Project – WIN 018645.00, Independence Street and Water Street Traffic Signal Improvements

Responsible Department: Engineering

Commentary: This order would authorize the City Manager to execute a Local Project Agreement with the Maine Department of Transportation for preliminary engineering and construction work for traffic signal improvements at the intersection of Independence Street and Water Street.

The Maine Department of Transportation has approved federal and state funds in an amount not to exceed \$262,543.00 which includes a Federal share of \$210,034.40 or 80% of construction costs, State share of \$26,254.30 or 10% of construction costs, and a City share of funding of \$26,254.30 or 10% of construction costs. As part of that project, the City would need to enter into a local project agreement with the Maine Department of Transportation which have been reviewed and recommended for approval by the Infrastructure Committee at its March 24, 2015 meeting.

John Theriault, City Engineer
Department Head

Manager's Comments:

City Manager

Associated Information: Councilor Order and Agreement

Budget Approval:

Finance Director

Legal Approval:

City Solicitor

Introduced for
 Passage CONSENT
 First Reading
 Referral

Page __ of __

**MAINE DEPARTMENT OF TRANSPORTATION
Locally Administered Project Agreement**

With the

City of Bangor

Regarding

Traffic Signal Improvements at Independence Street and Water Street

(MaineDOT Use Only)

| | |
|---|--|
| Total Project Amount: <u>\$262,543.00</u> | MaineDOT WIN: <u>018645.00</u> |
| Federal Award Amount: <u>\$210,034.40 (80%)</u> | Federal Project Number: <u>NHPP-1864(500)</u> |
| State Match: <u>\$26,254.30 (10%)</u> | Federal Authorization Date: _____ |
| Municipal Match: <u>\$26,254.30 (10%)</u> | Sub-recipient's Vendor ID: <u>VC1000007010</u> |
| Effective Date: _____ | Sub-recipient's DUNS® Number: <u>07-173-9692</u> |
| Expiration Date: _____ | CFDA #20.205: <u>Highway Planning & Construction</u> |

This subaward agreement for a federal-aid project is made between the Maine Department of Transportation, a Maine State Government agency headquartered at 24 Child Street in Augusta, Maine (“**MaineDOT**,”) and the **City of Bangor**, a municipal corporation and body politic with its principal offices at 73 Harlow Street in Bangor, Maine (“the **City**.”) **MaineDOT** and the **City** are collectively referred to as “the **Parties**.”

This Agreement contains the following attachments:

1. Federal Funding Accountability and Transparency Act (*signature required*);
2. Terms of Operation and Maintenance of Traffic Signals;
3. Federal Title VI Assurances.

WHEREAS, the work described herein was selected for the **MaineDOT** 2015-2017 Work Plan by the Bangor Area Comprehensive Transportation System, the metropolitan planning organization for the Bangor Urbanized Area, with its administrative offices located at 12 Acme Road, Suite 102, in Brewer, Maine (“**BACTS**”); and

WHEREAS, **MaineDOT** approved the **City**'s request to administer the project at the local level.

NOW, in consideration of the foregoing, **MaineDOT** and the **City** agree as follows:

ARTICLE 1. PROJECT OVERVIEW

- A. **SCOPE OF WORK:** Preliminary engineering and construction work for traffic signal improvements at the intersection of Independence Street and Water Street (“the **Project**.”) Any substantial change to this scope of work shall require approval from **BACTS** and **MaineDOT** to be eligible for federal and state funding.
- B. **FUNDING.** The estimated total cost of the **Project** is two hundred sixty-two thousand five hundred forty-three dollars (**\$262,543**) to be shared at the rates and terms in Article 3.

- C. **ROLE OF CITY.** The **City** shall take the lead in developing the **Project** and assign a full-time municipal employee with certification from **MaineDOT** to be in responsible charge of the **Project**. At all times, this Local Project Administrator shall follow the policies and procedures in the latest edition of **MaineDOT's Local Project Administration Manual**.
- D. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to carry out the State's responsibilities regarding the **Project**. This person or his/her designee will have the authority to request design changes to meet applicable laws and design standards; accept or reject any invoice; review construction activities to ensure compliance with contract documents; and take all other action necessary to ensure the proper performance of this agreement.

ARTICLE 2. PROJECT DEVELOPMENT

- A. **AUTHORIZATION.** The **City** shall receive Authorization to Proceed from **MaineDOT** before starting work or executing a contract for services. All municipal costs incurred before such authorization is given shall be ineligible for reimbursement.
- B. **KICKOFF.** Before starting work, the **City** shall review with **MaineDOT's** Project Manager the scope of work, estimated cost, schedule, and legal requirements for the **Project**. If necessary, the **City** shall provide an updated schedule and cost estimate within a reasonable timeframe.
- C. **PROGRESS REPORTS.** The **City** shall provide **MaineDOT** with monthly progress reports for the duration of the **Project** listing tasks completed, any changes in staffing, and any issues that could affect the schedule.
- D. **CONSULTANT SERVICES.** The **City** may contract for consultant engineering services as necessary to develop and oversee the **Project**. In doing so, the **City** shall:
1. Use qualifications-based selection pursuant to federal regulation 23 CFR, Part 172.
 2. Obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
 3. Ensure that "Consultant General Conditions for Local Public Agencies" govern all work, including insertion of Form FHWA-1273 and Civil Rights Assurances into every contract.
 4. Obtain **MaineDOT's** written approval before modifying any contract. ***MaineDOT** reserves the right not to reimburse the **City** for work covered by a modification executed without prior approval or for work performed before the effective date of a modification.*
- E. **DESIGN.** All design plans, specifications, estimates and contract documents shall be developed in accordance with the latest versions of **MaineDOT's Highway Design Guide and Standard Specifications (2014)**, as follows:
1. The **City** shall submit a preliminary design report (PDR), if applicable, and the final plans, specifications and estimate (PS&E) package to **MaineDOT** for review and comment.
 2. The **City** shall address to **MaineDOT's** satisfaction any changes requested or concerns expressed before the **Project** may be advertised for construction.
 3. Advertising for construction bids or moving to the construction stage without **MaineDOT's** written authorization shall render the **Project** ineligible for federal and state funding.

- F. **QUALITY CONTROL.** The **City** shall be responsible for the quality of the design plans, specifications and estimates for the **Project** using a documented quality-control process. Acceptance of the final PS&E package by **MaineDOT** shall not relieve the **City** of responsibility for the quality of the engineering documents for the **Project**.
- G. **PUBLIC PARTICIPATION.** The **City** shall provide opportunity for the public and all abutters to learn about the **Project** and express concerns, using a public process that is appropriate for the scope of work and acceptable to the **MaineDOT** Project Manager. Documentation and a public process certification (Letter 16) shall be submitted to **MaineDOT** with the final PS&E package.
- H. **ENVIRONMENTAL PROCESS.** The **City** or its contracted consultant shall prepare and submit to **MaineDOT** all required environmental documents, including but not limited to Letter 11 and the National Environmental Policy Act (NEPA) checklist. **MaineDOT** will prepare and submit to the Federal Highway Administration all documentation required under NEPA.
- I. **PERMITS.** The **City** shall obtain all approvals, permits and licenses needed for the **Project**. Copies shall be submitted to **MaineDOT** with an environmental certification (Letter 12) with the final PS&E package.
- J. **UTILITIES.** The **City** shall coordinate the **Project** with all utilities and submit documentation to **MaineDOT** with a utility certification (Letter 13) with the final PS&E package. **MaineDOT's** revised Utility Accommodation Rules (October 2014) shall apply to any utility relocations.
- K. **RIGHT OF WAY.** If applicable, **MaineDOT** will acquire any rights necessary to construct and maintain the **Project**.
- L. **FORCE ACCOUNT.** If the **City** intends to construct the **Project** with its municipal work force or to furnish materials for the **Project**, the **City** shall obtain **MaineDOT's** written authorization before proceeding. If so authorized to use a "force account" process, the **City** shall comply with the applicable regulations – 23 CFR, Parts 635.201 to 635.205.
- M. **SOLICITATION OF BIDS.** Competitive bidding shall be used to hire a contractor unless a "force account" process is authorized. The **City** shall solicit for bids upon **MaineDOT's** written authorization in accordance with the final, approved plans and specifications as follows:
1. The **City** shall follow the procedures in **MaineDOT's** "Standard Specifications" and adhere to all applicable federal requirements, unless otherwise authorized by **MaineDOT**.
 2. The **City** and **MaineDOT** shall have the right to accept or reject the bids submitted.
 3. The **City** shall not award a contract without **MaineDOT's** written approval.
- N. **CONTRACT AWARD.** Upon **MaineDOT's** written approval, the **City** shall award a construction contract to the lowest responsive, responsible bidder as follows:
1. The **City** shall administer the contract for the duration of the **Project**.
 2. Form FHWA-1273 shall be physically incorporated into the contract.
 3. The contract shall specify that the **Project** comply with the latest version of **MaineDOT's** "Standard Specifications" (November 2014) and applicable special provisions.

- O. CONSTRUCTION. The **City** shall hold a pre-construction meeting with **MaineDOT**, the contractor, utilities and any other parties involved in or affected by the construction process. During the work, the **City** shall provide the supervision, inspection and documentation necessary to ensure that the **Project** is completed to **MaineDOT**'s satisfaction in accordance with the plans, specifications and provisions of the contract, as follows:
1. The **City** shall use procedures acceptable to **MaineDOT** to document the quantity and quality of all construction-related work. The **City** shall provide monthly progress reports and shall retain all documentation as provided under Article 5.A.
 2. The **City** or its contracted consultant shall be responsible for coordinating all materials testing necessary to meet the Minimum Testing Requirements for the **Project**, in compliance with 23 CFR, Part 637, "Quality Assurance Procedures for Construction." Test results shall be provided to **MaineDOT** upon request.
 3. Any contract modification shall be submitted to **MaineDOT** for review and comment before it is executed. *MaineDOT reserves the right not to reimburse the **City** for work associated with a contract modification executed without **MaineDOT**'s prior review.*
 4. Traffic in work zones shall be controlled in accordance with Part VI of the federal Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).
 5. Upon completion, the **City** shall provide compliance certification that the **Project** was constructed, quantities were measured and documented, and materials were tested in accordance with the approved plans, specifications and provisions of the contract.
- P. MAINEDOT OVERSIGHT. **MaineDOT** may inspect construction activities and documentation – and any test materials used – to ensure compliance with the **Project** specifications and construction contract. **MaineDOT** may reject work or materials out of compliance and may withhold reimbursement to the **City** for any such work or materials.
- Q. MAINTENANCE. Upon completion, the **Municipality** shall operate and maintain the improvements under the terms of Attachment 2 to this Agreement, "Operation and Maintenance of Traffic Signals."

ARTICLE 3. FINANCIAL PROVISIONS

- A. MAINEDOT SHARE. **MaineDOT**, using federal and state resources programmed by **BACTS**, will reimburse the **City** for ninety percent (**90%**) of **Project** expenditures that are deemed to be eligible for such funding, up to a maximum reimbursement of two hundred thirty-six thousand two hundred eighty-eight dollars and seventy cents (**\$236,288.70**.)
- B. LOCAL SHARE. The **City** shall share in all **Project** expenditures eligible for federal and state funding at the rate of ten percent (**10%**), said share estimated to be twenty-six thousand two hundred fifty-four dollars and thirty cents (**\$26,254.30**.) The **City** shall be responsible for one hundred percent (100%) of any costs deemed ineligible for reimbursement and all costs exceeding the maximum amount of this Agreement as outlined in Article 1.B, unless otherwise approved in writing by **BACTS** and **MaineDOT**.

- C. **MAINEDOT COSTS.** All costs incurred by **MaineDOT** staff in developing and overseeing the **Project** shall be paid for out of the **Project**, including but not limited to design reviews, environmental work, utility support, right-of-way support, and construction engineering. The **City** shall share in these costs commensurate with its overall portion of the **Project**. **MaineDOT** will reconcile these costs upon completion of the **Project** and shall deduct the **City's** share from the final invoice payment to the **City**.
- D. **REIMBURSEMENT.** The **City** may invoice **MaineDOT** periodically for the federal and state shares of **Project** expenditures deemed eligible for such funding, up to the maximum in Article 3.A. Invoices shall be submitted no more than monthly, subject to these conditions:
1. Invoices shall be submitted on the **City's** letterhead and reference WIN 018645.00.
 2. Each invoice shall be accompanied by a progress report in accordance with Article 2.C.
 3. Each invoice shall contain an itemized account of expenditures incurred during the period covered by the invoice, consistent with the approved budget for the **Project**. Backup documentation and proof of payment made shall accompany each invoice.
 4. Each invoice shall have an accumulative total and a breakdown of **MaineDOT's** and the **City's** shares of **Project** costs.
 5. Each invoice shall include a certification from the **City** that all amounts claimed are correct, due and not claimed previously.
 6. Payment of the final invoice shall be subject to a final inspection of the completed **Project** to determine the acceptability of the work.
 7. **MaineDOT** may withhold reimbursements to the **City** to recover previous payments for items subsequently deemed to be ineligible for federal or state funding.
- E. **REPAYMENT.** If the **City** withdraws its support for the **Project**, leading **MaineDOT** to cancel the **Project** and terminate this Agreement for cause, **MaineDOT** reserves the right to require the **City** to refund all reimbursements made and to repay **MaineDOT** fully for all **Project** costs incurred. All federal and state funds returned to **MaineDOT** by the **City**, as well as all federal and state funds remaining in the **Project**, shall be made available to **BACTS** for reprogramming once the **Project** is closed out.
- F. **REMAINING FUNDS.** Any federal and state funds remaining in the **Project** after payment of the final invoice from the **City** shall be made available to **BACTS** for reprogramming.

ARTICLE 4. PROJECT RECORDS AND AUDIT

- A. **Project** records shall consist of all printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all **Project** records for at least **four (4) years** from the date of **MaineDOT's** acceptance of the final invoice for the **Project**. If any litigation, claim, negotiation or audit has begun before the end of this four (4) year period, all **Project** records shall be kept at least until all action and resolution of all issues arising from it are complete. All records shall be provided to **MaineDOT** upon request after completion or termination of the **Project**.

- B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the U.S. Government and the State of Maine to inspect and audit **Project** documents at reasonable times. Copies shall be furnished at no cost.
- C. The **City** shall keep **Project** records in such form as may be easily audited. Audits shall be performed in accordance with generally accepted government auditing standards and Title 2 CFR, Part 200, Subpart F - "Audit Requirements."

ARTICLE 5. GENERAL PROVISIONS

- A. Governing Laws. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement will be subject to applicable federal laws and regulations, including but not limited to Title 23 in the United States Code (USC) for statutory law and Title 23 in the Code of Federal Regulations (CFR) for administrative law, as well as Title 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- B. Indemnification. To the extent permitted by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officials, employees, agents, consultants or contractors. Nothing herein 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 provision shall survive the termination or expiration of this Agreement.*
- C. Confidentiality. Information pertaining to engineering estimates of construction costs shall be kept confidential in accordance with the provisions of Maine law (23 MRSA, Section 63.)
- D. Flow Down. Contracts between the **City** and all consultants, contractors or other third parties shall contain or incorporate by reference all applicable provisions of this Agreement.
- E. Independent Capacity. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.
- F. Set-Off. **MaineDOT** shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, without being limited to, the State of Maine's option to withhold for purposes of set-off any payment due to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract commencing before the effective date of this Agreement. **MaineDOT** shall exercise its set-off rights in accordance with standard state practices including – in case of set-off pursuant to an audit – the finalization of the audit by **MaineDOT** or the State Controller.
- G. No Assignment Without Approval. The **City** shall not assign this Agreement to a third party or dispose of this Agreement without specific written consent from **MaineDOT**. In no case shall such action release the **City** from liability under this Agreement.
- H. Binding Effect. The **City** and **MaineDOT** shall be bound by the terms of this Agreement. This provision shall apply to the executors of this Agreement, their successors, administrators and legal representatives.

- I. Equal Employment Opportunity. The **City** shall adhere to all applicable EEO requirements in the administration of the **Project**, as follows:
 1. The **City** shall not discriminate against any employee or applicant for employment *relating specifically to work under this Agreement* because of race, color, religious creed, sex, national origin, ancestry, age or physical handicap unless related to a bona fide occupational qualification. The **City** shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age or physical handicap during any period of employment under this Agreement. Such action shall include, but not be limited to: employment, upgrading, demotions, transfers, recruitment, layoffs or terminations, rates of pay or other forms of compensation and selection for all forms of training and apprenticeships. The **City** shall post prominently in places readily available to all employees and applicants for such employment under this Agreement notices setting forth the provisions of this paragraph.
 2. In all solicitations or advertising for employees relating to work done under this Agreement, the **City** shall state that all qualified applicants shall receive consideration for employment regardless of race, color, religious creed, sex, national origin, ancestry, age or physical handicap.
 3. The **City** shall send to each representative of any of its employees covered by a collective-bargaining agreement – or any other contract or understanding under which labor or services are to be furnished under this Agreement – a notice advising of the **City's** commitment under this Article and shall post copies prominently in places readily available to all such employees and applicants for employment.
 4. The **City** shall include all of the foregoing equal employment opportunity provisions under this Article in any contract for services or work for the **Project** so that such provisions are binding upon each consultant and contractor – with the exception of any contract for the purchase of standard commercial supplies or raw materials. To the maximum extent feasible, the **City** or any of its consultants and contractors shall list all suitable employment openings with the Maine Job Service. *This provision shall not apply to employment openings that the **City** or any of its consultants and contractors propose to fill from within their own organizations.*

ARTICLE 6. TERMINATION

- A. FOR CAUSE. **MaineDOT** may terminate this Agreement for cause in the event of default as defined in Section 6.B below. The **City** will have a cure period of fourteen (14) calendar days after receiving a Notice of Default. If the **City** fails to make a good-faith effort to correct all defaults within the cure period, **MaineDOT** may terminate this Agreement upon written Notice of Termination for Cause, with the following conditions:
 1. The **City** and all consultants and contractors working on the **Project** shall cease work immediately – except for work required to protect public health and safety – and turn over to **MaineDOT** all **Project** records within thirty (30) days of the termination date.
 2. If termination is the result of the **City's** failure to correct any occurrence of default, **MaineDOT** reserves the right to recover from the **City** all reimbursements made in accordance with Article 3, “Financial Provisions.”

3. All federal and state funds remaining in the terminated **Project**, as well as any federal and state funds recovered from the **City**, shall be made available to **BACTS** for reprogramming in accordance with Article 3.F, “Remaining Funds.”

B. **GROUND FOR DEFAULT.** The **City** shall receive a Notice of Default if the **City**:

1. Takes any action without approval from **MaineDOT** that leads to cancellation of the **Project** or the loss of eligibility of the **Project** for federal or state funding.
2. Uses **Project** funds for a purpose other than what is authorized by this Agreement.
3. Misrepresents or falsifies of any claim for reimbursement.
4. Fails to meet standards of performance outlined in this Agreement.
5. Breaches any material provision of this Agreement.

C. **FOR CONVENIENCE.** This Agreement may be terminated for convenience by mutual consent of the **Parties** for any reason not defined as “default.” **MaineDOT** shall notify the **City** through a written Notice of Termination for Convenience, with the following conditions:

1. If termination is other than for default by the **City**, the **City** shall be reimbursed for federally eligible work or service performed until the effective termination date. The **City**'s share of costs incurred by **MaineDOT** staff in the development and oversight of the **Project** shall be deducted from amounts due to the **City** in accordance with Article 3.C, “MaineDOT Costs.”
2. All **Project** records shall be turned over to **MaineDOT** within thirty (30) days of the date of the Notice of Termination for Convenience.
3. All federal and state funds remaining in the **Project** shall be made available to **BACTS** for reprogramming once the **Project** is closed out.

ARTICLE 7. EXPIRATION

All provisions of this Agreement – except for Article 2.Q (maintenance), Article 4.A (records), Article 5.B (indemnification) and Article 5.C (confidentiality) – shall expire upon satisfactory completion of the terms of this Agreement or **four (4) years** from the final day of the month in which this Agreement was fully executed, whichever occurs first. The provisions of Article 5.B and Article 5.C shall remain in full effect until terminated in writing by the **Parties** or negated by law.

ARTICLE 8. DEBARMENT

- A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its officers, agents and employees associated with the **Project** are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency. If the **City** is unable to certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or any of its officers, agents and employees associated with the **Project** is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal or state agency.
- B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state agency.

- C. The **City** agrees that if it contracts with an outside entity, that entity and its principals shall certify that they:
1. Have not within a 3-year period preceding the date of such contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with the following: a.) obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; b.) violating federal or state antitrust statutes; and c.) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 2. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 1 of this section; and
 3. Have not within a 3-year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default.

ARTICLE 9. CONFLICT OF INTEREST

By signing this Agreement, the **City** agrees that it shall not enter into a contract with any outside entity that has a financial or other interest in the **Project** or in its outcome, other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the project or related matters; and c.) any interest in real property acquired for the **Project** unless such real property interest is openly disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 10. AGREEMENT APPROVAL

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

IN WITNESS WHEREOF, **MaineDOT** and the **City** have executed this Agreement effective on the date last signed.

City of Bangor

Maine Department of Transportation

By: _____
Catherine M. Conlow, City Manager

By: _____
William A. Pulver, P.E., Director,
 Bureau of Project Development

Date: _____

Date: _____

Federal Funding Accountability and Transparency Act

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

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

- A) The total compensation and names of the top five officers if:
- More than 80% of the **City**'s annual gross revenues are from the U.S. Federal Government; and
 - Those revenues are greater than \$25 million annually; and
 - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).
- B) Legal name and DUNS[®] number on file with the Central Contractor Registration (CCR):

City of Bangor, Maine

07-173-9692

Sign and Print Legal CCR Name

DUNS[®] Number

Authorized Representative: _____

Catherine M. Conlow, City Manager

OPERATION & MAINTANCE OF TRAFFIC SIGNALS

- A. The **City of Bangor** (“the **City**”) agrees to operate and maintain all traffic signals and related equipment installed pursuant to this Agreement to function as designed and installed as part of the above-referenced Locally Administered Project, unless approved otherwise as hereinafter provided or as necessary as follows:
1. All malfunctions and deficiencies in the traffic signal or any equipment appurtenant thereto shall be repaired or corrected expeditiously in accordance with the Institute of Transportation Engineer’s (ITE) “Traffic Signal Installation and Maintenance Manual.” Any failure to correct the traffic **signal to function as designed could, upon written notification from the MaineDOT**, result in the **MaineDOT** making all necessary repairs at the **City’s** expense.
 2. The visibility of the traffic signal shall be preserved and maintained at all times by removing any visual impairment thereto.
 3. No change in operation or modification to the traffic signal or any equipment appurtenant thereto shall be made without the express written approval of the **MaineDOT**.
 4. The **MaineDOT** shall be notified in writing prior to any removal or replacement of the traffic signal or any equipment and appurtenant thereto. Upon removal, such traffic signal or equipment so removed shall be disposed of as deemed appropriate by mutual agreement of the **MaineDOT** and **City** without any cost to the **MaineDOT**, unless agreed otherwise in writing.
- B. The **City** agrees to be responsible for the electrical service for the traffic signals and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for the installation of such service.
- C. The **City** agrees to maintain all pavement markings (including stop bars, lane use arrows and all striping necessary to delineate the turning lane) and all traffic control signs as furnished under the project.
- D. The **City** agrees to allow the contractor for the project to control all traffic within all designated work areas at such times and in such a manner necessary to permit construction of the project and the installation of the traffic signal as specified in the traffic control plan approved by the **MaineDOT**.

**The United States Department of Transportation (U.S. DOT)
FHWA STANDARD TITLE VI/NONDISCRIMINATION ASSURANCES**

DOT Order No. 1050.2A

The **City of Bangor** (herein referred to as the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The City of Bangor, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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

By signing this ASSURANCE, the Recipient also agrees to comply (and require any subrecipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

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

DATED 2-25-2015

By Catherine M. Conlow
Catherine M. Conlow, City Manager
City of Bangor

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MAR 04 2015

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**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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 on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



Assigned to Councilor

CITY OF BANGOR

(TITLE.) ORDER, Authorizing Execution of Agreement for Maine Department of Transportation Local Project – WIN #20232.42, Broadway Mill and Fill Project

ORDERED,

THAT: the City Manager is hereby authorized and directed to execute an agreement with the Maine Department of Transportation for the following:

An Agreement with the Maine Department of Transportation – Broadway Mill and Fill Project, WIN #20232.42

Copy of the agreement is attached.

COUNCIL ACTION

Item No. _____

Date: April 13, 2015

Item/Subject: ORDER, Authorizing Execution of Agreement for Maine Department of Transportation Local Project – WIN 20232.42, Broadway Mill and Fill Project

Responsible Department: Engineering

Commentary: This order would authorize the City Manager to execute a Local Project Agreement in the amount of \$450,000.00 with the Maine Department of Transportation for design, construction work for a project on Broadway (Route 15B) beginning at the intersection of Broadway and Stillwater Avenue and extending northerly approximately 0.43 miles to Center Street. The work to consist of a two inch mill and fill with ADA and drainage improvements. If approved the agreement stipulates a State share of 225,000.00 or 50% of the total project costs and a City share of \$225,000.00 or 50% of the total project cost. This item was reviewed and recommended for approval by the Infrastructure Committee at its March 24, 2015 meeting.

John M. Theriault, City Engineer
Department Head

Manager's Comments:

City Manager

Associated Information: Councilor Order and Agreement

Budget Approval:

Finance Director

Legal Approval:

City Solicitor

Introduced for

Passage
 First Reading
 Referral

Page __ of __

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|--------------------------|-------|
| <i>Internal Use Only</i> | |
| TEDOCS #: | _____ |
| CT#: | _____ |
| CSN#: | _____ |

**STATE OF MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL PARTNERSHIP AGREEMENT**

WIN 20232.42

REGARDING

BROADWAY MILL AND FILL PROJECT, BANGOR

This Cooperative Agreement (AGREEMENT) is entered into by and between the MAINE DEPARTMENT OF TRANSPORTATION (“MaineDOT”), an agency of state government with its principal administrative offices located on Child Street, Augusta, Maine, and the CITY OF BANGOR (“Bangor”), a municipality in the State of Maine with offices located at 73 HARLOW STREET, BANGOR, ME.

WHEREAS, Bangor shall oversee the design and construction of a project on Broadway (Route 15B) beginning at the intersection of Broadway and Stillwater Avenue and extending northerly approximately 0.43 miles to Center Street. The work will consist of a 2 inch mill and fill with ADA and drainage improvements. Bangor estimates the total cost of this project to be \$450,000.00.

BANGOR SHALL:

- A. Shall procure and oversee a project on Broadway for the work outlined above.
- B. Perform such work in accordance with a design by an engineer licensed in the State of Maine. The Licensed Engineer shall provide a certification to the Municipality and to MaineDOT that, in his/her professional opinion, the Project as designed will provide a smooth ride, not reduce the safety, mobility or structural quality of the state [state aid] road. All design documents must be stamped and signed in accordance with this provision by the Professional Engineer.
- C. Agree to secure all necessary Federal, State and Local permits necessary to complete the work. Bangor also agrees to secure any needed property rights in accordance with all applicable State and Federal Laws.
- D. Agree that any exceptions to State Design Standards shall be documented as part of this process. This documentation shall compare the new design to the existing conditions for each of the exceptions to current design standards. Any such exceptions shall be displayed on the cover sheet for the Project plans with the signature and PE stamp of the engineer responsible for the design of the Project.
- E. Be responsible, within the Project limits, for the following:

- a. Ensuring that the safety of the corridor and the life of the resulting structural and design elements are equal to or better than existing conditions and design;
 - b. Ensuring that the structures, roadways and/or design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;
 - c. Ensuring that the Project does not introduce any unanticipated safety hazards to the traveling public;
 - d. Ensuring that the Project retains the same level of mobility or improves mobility of travel within the corridor; and,
 - e. Ensuring that the Project does not in any manner decrease the life expectancy of this component of Maine's transportation system.
 - f. Ensure the project meets the most recent Americans with Disabilities Act of 1990 (ADA) design requirements.
- F. Provide certification through their Engineer to MaineDOT that the project is complete and was constructed as designed.
- G. Commence construction within twelve (12) months and shall be certified complete within twenty four (24) months of execution of this agreement. Bangor may forfeit the unpaid balance of this grant if these deadlines are not met or they can not demonstrate earnest and good faith efforts to meet them.

MAINEDOT SHALL:

- A. **Provide a maximum of \$225,000.00 in State funds supporting the project work stated above in initiative monies.** Reimbursement will be made by the Department at a minimum of 1/3 project completion upon receipt of supporting cost documentation from the Municipality. Payments will be made per Appendix A, attached. The Department's Region Engineer shall review the costs and certify their eligibility prior to reimbursement to the Municipality. Payment by MaineDOT Municipal Partnership Initiative funds shall not exceed 50% of the actual costs incurred and paid by the Municipality or **\$225,000.00**.

The City of Bangor and MaineDOT agree to function within all applicable laws, statutes, regulations, and AGREEMENT provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in duplicate effective on the day and date last signed.

CITY OF BANGOR

Dated: _____

By: _____
Catherine Conlow
City Manager

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

Dated: _____

By: _____
David Bernhardt, PE
Commissioner

APPENDIX A
PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION

Municipal Partnership Initiative Project

MUNICIPALITY OF Bangor

PROPOSED IMPROVEMENTS TO: **Broadway (Route 15B)**

STATE PROJECT IDENTIFICATION NUMBER (WIN) 20232.42

Project Scope: 2 inch mill and fill with drainage and ADA pedestrian ramp improvements

Funding Outline: The Total Project Estimated Cost is \$450,000.00, and the Parties agree to share costs through all stages of the Project under the terms outlined below.

| Work Element | Municipal Share | | State Share | | Total Cost |
|--|-----------------|------------|-------------|------------|------------|
| | % | \$ | % | \$ | \$ |
| Project Costs | 50 | 225,000.00 | 50 | 225,000.00 | 450,000.00 |
| PROJECT SHARES | | 225,000.00 | | 225,000.00 | 450,000.00 |
| Total Cost of Additional Work above agreement estimate | 100% | | | | |
| TOTAL ESTIMATED MUNICIPAL REIMBURSEMENT | | 225,000.00 | | | |

REIMBURSEMENT SCHEDULE:

Upon 1/3 project completion the municipality may begin invoicing the Department. Preferred invoicing interval is 1/3, 2/3, final, the Department will accept monthly invoices after 1/3 project completion with a maximum invoice submittal not to exceed 5 invoices.

DESIGN EXCEPTIONS REQUIRED: YES NO

Design exceptions where required for this project. Please see attached approval from MaineDOT Chief Engineer outlining design exceptions.

| |
|--------------------------|
| <i>Internal Use Only</i> |
| TEDOCS #: _____ |
| CT#: _____ |
| CSN#: _____ |

**STATE OF MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL PARTNERSHIP AGREEMENT**

WIN 20232.42

REGARDING

BROADWAY MILL AND FILL PROJECT, BANGOR

This Cooperative Agreement (AGREEMENT) is entered into by and between the MAINE DEPARTMENT OF TRANSPORTATION (“MaineDOT”), an agency of state government with its principal administrative offices located on Child Street, Augusta, Maine, and the CITY OF BANGOR (“Bangor”), a municipality in the State of Maine with offices located at 73 HARLOW STREET, BANGOR, ME.

WHEREAS, Bangor shall oversee the design and construction of a project on Broadway (Route 15B) beginning at the intersection of Broadway and Stillwater Avenue and extending northerly approximately 0.43 miles to Center Street. The work will consist of a 2 inch mill and fill with ADA and drainage improvements. Bangor estimates the total cost of this project to be \$450,000.00.

BANGOR SHALL:

- A. Shall procure and oversee a project on Broadway for the work outlined above.
- B. Perform such work in accordance with a design by an engineer licensed in the State of Maine. The Licensed Engineer shall provide a certification to the Municipality and to MaineDOT that, in his/her professional opinion, the Project as designed will provide a smooth ride, not reduce the safety, mobility or structural quality of the state [state aid] road. All design documents must be stamped and signed in accordance with this provision by the Professional Engineer.
- C. Agree to secure all necessary Federal, State and Local permits necessary to complete the work. Bangor also agrees to secure any needed property rights in accordance with all applicable State and Federal Laws.
- D. Agree that any exceptions to State Design Standards shall be documented as part of this process. This documentation shall compare the new design to the existing conditions for each of the exceptions to current design standards. Any such exceptions shall be displayed on the cover sheet for the Project plans with the signature and PE stamp of the engineer responsible for the design of the Project.
- E. Be responsible, within the Project limits, for the following:

- a. Ensuring that the safety of the corridor and the life of the resulting structural and design elements are equal to or better than existing conditions and design;
 - b. Ensuring that the structures, roadways and/or design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;
 - c. Ensuring that the Project does not introduce any unanticipated safety hazards to the traveling public;
 - d. Ensuring that the Project retains the same level of mobility or improves mobility of travel within the corridor; and,
 - e. Ensuring that the Project does not in any manner decrease the life expectancy of this component of Maine's transportation system.
 - f. Ensure the project meets the most recent Americans with Disabilities Act of 1990 (ADA) design requirements.
- F. Provide certification through their Engineer to MaineDOT that the project is complete and was constructed as designed.
- G. Commence construction within twelve (12) months and shall be certified complete within twenty four (24) months of execution of this agreement. Bangor may forfeit the unpaid balance of this grant if these deadlines are not met or they can not demonstrate earnest and good faith efforts to meet them.

MAINEDOT SHALL:

- A. **Provide a maximum of \$225,000.00 in State funds supporting the project work stated above in initiative monies.** Reimbursement will be made by the Department at a minimum of 1/3 project completion upon receipt of supporting cost documentation from the Municipality. Payments will be made per Appendix A, attached. The Department's Region Engineer shall review the costs and certify their eligibility prior to reimbursement to the Municipality. Payment by MaineDOT Municipal Partnership Initiative funds shall not exceed 50% of the actual costs incurred and paid by the Municipality or **\$225,000.00**.

The City of Bangor and MaineDOT agree to function within all applicable laws, statutes, regulations, and AGREEMENT provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in duplicate effective on the day and date last signed.

CITY OF BANGOR

Dated: _____

By: _____
Catherine Conlow
City Manager

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

Dated: _____

By: _____
David Bernhardt, PE
Commissioner

APPENDIX A
PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION

Municipal Partnership Initiative Project

MUNICIPALITY OF Bangor

PROPOSED IMPROVEMENTS TO: **Broadway (Route 15B)**

STATE PROJECT IDENTIFICATION NUMBER (WIN) 20232.42

Project Scope: **2 inch mill and fill with drainage and ADA pedestrian ramp improvements**

Funding Outline: The Total Project Estimated Cost is **\$450,000.00**, and the Parties agree to share costs through all stages of the Project under the terms outlined below.

| Work Element | Municipal Share | | State Share | | Total Cost |
|--|-----------------|-------------------|-------------|------------|------------|
| | % | \$ | % | \$ | \$ |
| Project Costs | 50 | 225,000.00 | 50 | 225,000.00 | 450,000.00 |
| PROJECT SHARES | | 225,000.00 | | 225,000.00 | 450,000.00 |
| Total Cost of Additional Work above agreement estimate | 100% | | | | |
| TOTAL ESTIMATED MUNICIPAL REIMBURSEMENT | | 225,000.00 | | | |

REIMBURSEMENT SCHEDULE:

Upon 1/3 project completion the municipality may begin invoicing the Department. Preferred invoicing interval is 1/3, 2/3, final, the Department will accept monthly invoices after 1/3 project completion with a maximum invoice submittal not to exceed 5 invoices.

DESIGN EXCEPTIONS REQUIRED: YES NO

Design exceptions where required for this project. Please see attached approval from MaineDOT Chief Engineer outlining design exceptions.

COUNCIL ACTION

Item No. _____

Date: April 13, 2015

Item/Subject: ORDER, Authorizing Execution of a Modification Agreement for Maine Department of Transportation Local Project – WIN 020401.00, Resurfacing of a Portion of Broadway

Responsible Department: Engineering

Commentary: This order would authorize the City Manager to execute of a Local Project Modification Agreement in the amount of \$1,038,500.00 with the Maine Department of Transportation for design, construction work for a project to resurface a portion of Broadway from 0.04 mile south of the entrance road to People’s United Bank (near Husson Avenue) continuing northerly for 2.60 miles.

If approved the modification agreement would include a reduced Federal share of 17,600.00 or 80% of Preliminary Engineering and a revised State share of 1,020,900.00 or 20% of Preliminary Engineering and 100% of Construction project costs and a City share being 0%. This item was reviewed and recommended for approval by the Infrastructure Committee at its March 24, 2015 meeting.

John M. Theriault, City Engineer
Department Head

Manager's Comments:

City Manager

Associated Information: Councilor Order and Agreement

Budget Approval:

Finance Director

Legal Approval:

City Solicitor

Introduced for

- Passage
- First Reading
- Referral

Page __ of __



Assigned to Councilor

CITY OF BANGOR

(TITLE.) ORDER, Authorizing Execution of a Modification Agreement for Maine Department of Transportation Local Project – WIN #020401.00, Resurfacing of a Portion of Broadway

ORDERED,

THAT: the City Manager is hereby authorized and directed to execute an agreement with the Maine Department of Transportation for the following:

A Modification Agreement with the Maine Department of Transportation – Resurfacing of a Portion of Broadway, WIN #020401.00

Copy of the agreement is attached.