

COUNCIL ACTION

Item No. _____

Date: December 8, 2014

Item/Subject: ORDER, Authorizing Execution of Agreement for Maine Department of Transportation Local Project – WIN 020401.00, Preliminary Engineering for Resurfacing 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 preliminary engineering work for a resurfacing of a portion of Broadway, starting 0.04 mile south of the entrance road to People's United Bank (near Husson Avenue) and continuing northerly for 2.60 miles.

The Maine Department of Transportation has approved federal and state funds in an amount not to exceed \$22,000.00 which includes a Federal share of \$17,600.00 or 80% of construction costs and a State share of funding of \$4,400.00 or 20% 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 November 25, 2014 meeting.

John Theriault, P.E.
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

DECEMBER 8, 2014



Assigned to Councilor

CITY OF BANGOR

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

Copy of the agreement is attached.



<i>MaineDOT use only</i>	
TEDOCS #:	_____
AMS ID #:	_____
CSN:	_____
PROGRAM:	<i>Multimodal (OUC 57000)</i>

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

With the
Municipality of Bangor
Regarding
Preliminary Engineering for Resurfacing of a Portion of Broadway

Total Amount: <u>\$22,000.00</u>	MaineDOT WIN: <u>020401.00</u>
Federal Share: <u>\$17,600.00 (80%)</u>	Federal Project #: _____
State Share: <u>\$4,400.00 (20%)</u>	Scope: <u>Design</u>
Municipal Share: <u>\$0.00</u>	Vendor #: <u>VC1000007010</u>
Effective Date: _____	Municipality's DUNS® Number: <u>07-173-9692</u>
Expiration Date: _____	CFDA #20.205: <u>Highway Planning & Construction</u>

This Agreement for local administration of a federal-aid project is between the Maine Department of Transportation, an agency of the State of Maine headquartered at 24 Child Street in Augusta, Maine ("MaineDOT"), and the Municipality of Bangor, a municipal corporation and body politic with its principal offices at 73 Harlow Street in Bangor, Maine ("the Municipality.") **MaineDOT** and the **Municipality** are collectively referred to as "the Parties."

- The following attachments are incorporated into this Agreement:
 - Appendix A: Federal Funding Accountability and Transparency Act Form (*signature required*);
 - Appendix B: Federal Highway Administration Civil Rights Assurance (*signature required*.)

WHEREAS, the scope of work described herein was selected for federal and state funding and for inclusion in **MaineDOT's** 2015-2016 capital program; and

WHEREAS, **MaineDOT** has authorized the **Municipality** to administer the work at the local level.

NOW, in accordance with the stipulations and conditions herein, the **Parties** agree as follows:

ARTICLE 1. PROJECT OVERVIEW

- A. **SCOPE OF WORK.** Preliminary engineering work for a resurfacing of a portion of Broadway, starting 0.04 mile south of the entrance road to People's United Bank (near Husson Avenue) and continuing northerly for 2.60 miles, to be performed by or for the **Municipality** and accepted by **MaineDOT** ("the **Project**.") Any substantial change to this scope of work shall require **MaineDOT's** written approval to be eligible for funding from **MaineDOT**.
- B. **FUNDING.** The estimated cost of the scope of work is twenty-two thousand dollars (**\$22,000**) to be shared at the rates and terms described in Article 3.
- C. **ROLE OF MUNICIPALITY.** The **Municipality** shall take the lead in developing the **Project** and assign a full-time employee with required certification from **MaineDOT** to be responsible for the **Project**. 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 approved contract documents; and take all other action necessary to ensure the proper performance of this agreement.

ARTICLE 2. PROJECT DEVELOPMENT

- A. AUTHORIZATION. The **Municipality** 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, or before a contract for services is executed, shall be ineligible for reimbursement. Ineligible costs shall not be credited toward the local match.
- B. PROJECT KICKOFF. Before starting work, the **Municipality** shall review with **MaineDOT's** Project Manager the scope of work, estimated cost, schedule, and legal requirements for the **Project**. If necessary, the **Municipality** shall provide an updated schedule and cost estimate.
- C. PROGRESS REPORTS. The **Municipality** 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 **Municipality** may contract for consultant engineering services as necessary to develop the **Project**. In doing so, the **Municipality** shall:
1. Use qualifications-based selection and develop an independent government estimate of the price of the services, pursuant to federal regulation 23 CFR, Part 172.
 2. Obtain the **MaineDOT** Project Manager's written approval before awarding any contract.
 3. Ensure that all contracts are fully executed before incurring any costs against them.
 4. 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.
 5. Obtain **MaineDOT's** written approval before modifying any contract. **MaineDOT** reserves the right not to reimburse the **Municipality** for work covered by a modification executed without prior approval or for work performed before the effective date of a modification.
- E. DESIGN WORK. The **Municipality** or its contracted consultant shall develop all design plans, specifications, estimates and contract documents for the **Project**, in accordance with the latest versions of **MaineDOT's** *Highway Design Guide* and *Standard Specifications*, as follows:
1. The **Municipality** shall submit the preliminary (50-60%) and final (95-100%) plans and specifications to **MaineDOT** for review and comment.
 2. The **Municipality** shall address to **MaineDOT's** satisfaction any changes requested or concerns expressed before requesting construction authorization from **MaineDOT**.
 3. Advertising for construction bids or otherwise proceeding to construction without **MaineDOT's** written authorization shall render the **Project** ineligible for federal funding.
- F. QUALITY CONTROL. The **Municipality** or its contracted consultant 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 Plans, Specifications and Estimate (PS&E) package by **MaineDOT** shall not relieve the **Municipality** or its consultant of responsibility for the quality of those engineering documents.

- G. PUBLIC PARTICIPATION. The **Municipality** shall provide the general public and all abutters with opportunity to learn about the **Project** and express concerns, using a public process that is suitable for the scope of work and acceptable to the **MaineDOT** Project Manager. A public process certification (Letter 16) shall be submitted to **MaineDOT** with the final PS&E package.
- H. ENVIRONMENTAL PROCESS. The **Municipality** 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 **Municipality** or its contracted consultant shall obtain all required approvals, permits and licenses. Copies of all such documents an environmental certification (Letter 12) shall be submitted to **MaineDOT** with the final PS&E package.
- J. UTILITIES. The **Municipality** or its contracted consultant 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 offsets for any utility relocations required for the **Project**.
- K. RIGHT OF WAY. If applicable, **MaineDOT** will acquire all right-of-way necessary for the **Project** and will carry out the right-of-way process in coordination with the **Municipality**.

ARTICLE 3. FINANCIAL PROVISIONS

- A. MAINEDOT SHARE. **MaineDOT** will reimburse the **Municipality** for one hundred percent (**100%**) of **Project** expenditures eligible for federal and state funding, not to exceed twenty-two thousand dollars (**\$22,000.**)
- B. LOCAL SHARE. The **Municipality** shall be responsible for any costs not eligible for reimbursement and all expenditures exceeding the maximum reimbursement in Article 3.A, unless **MaineDOT** approves otherwise in writing through a modification to this Agreement.
- C. MAINEDOT COSTS. All costs incurred by **MaineDOT** staff in the development and oversight of the **Project** shall be paid for out of the **Project**, including but not limited to design reviews, environmental work, utility support, right-of-way coordination, and construction engineering. The **Municipality** shall share in these costs commensurate with its portion of the **Project** identified in Article 3.B. **MaineDOT** will reconcile these costs upon completion of the **Project**.
- D. REIMBURSEMENT. The **Municipality** may seek reimbursement from **MaineDOT** periodically for **Project** expenditures eligible for federal and state funding, up to the maximum in Article 3.A. Invoices shall be submitted to **MaineDOT** no more than monthly, subject to these conditions:
1. Invoices shall be submitted on the **Municipality**'s letterhead and reference WIN 20401.00.
 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 include a certification from the **Municipality** that all amounts claimed are correct, due and not claimed previously.

5. No invoice shall be submitted for less than one thousand dollars (\$1,000) unless such invoice is the final invoice being submitted for reimbursement.
 6. **MaineDOT** may withhold requested payments to the **Municipality** to recover previous reimbursements made for expenditures subsequently deemed to have been ineligible for federal or state funding.
- E. **NON-APPROPRIATION.** While the execution of this Agreement manifests **MaineDOT's** intent to fulfill its financial obligations, such obligations are subject to budgetary appropriations. If **MaineDOT** receives insufficient resources to support this **Project**, if funds are de-appropriated, or if **MaineDOT** does not receive the authority to spend money programmed for this **Project**, **MaineDOT** shall be released from its obligation to make payment under this Agreement.

ARTICLE 4. PROJECT RECORDS AND AUDIT

- A. **Ownership.** **Project** records shall consist of all printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **Municipality**. All such records shall be considered the property of **MaineDOT** and provided to **MaineDOT** upon request after the completion or termination of the **Project**. The **Municipality** shall be allowed an interest commensurate with its share of **Project** costs.
- B. **Retention.** The **Municipality** 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.
- C. **Access.** The **Municipality** shall keep **Project** records in such form as may be easily audited. The **Municipality** and any consultant or contractor working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** documents at reasonable times. Copies of requested records shall be furnished at no cost.
- D. **Audits.** The **Municipality** shall adhere to the provisions of Office of Management and Budget (OMB) circular A-133, "Audits of States, Local Governments and Non-Profit Organizations."

ARTICLE 5. GENERAL PROVISIONS

- A. **Governing Law.** This Agreement is made and 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 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- B. **Indemnification.** To the extent permitted by law, the **Municipality** 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 **Municipality**, 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. *Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive the termination or expiration of this Agreement.*

- C. Confidentiality. Information pertaining to right-of-way negotiations, property appraisals and engineering estimates of construction costs shall be kept confidential in accordance with the provisions of Maine law (23 MRSA, Section 63.)
- D. Equal Employment Opportunity. The **Municipality** shall meet applicable EEO requirements:
1. The **Municipality** 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 **Municipality** 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 **Municipality** 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 **Municipality** 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 **Municipality** 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 **Municipality**'s commitment under this Article and shall post copies prominently in places readily available to all such employees and applicants for employment.
 4. The **Municipality** 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 **Municipality** 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 **Municipality** or any of its consultants and contractors propose to fill from within their own organizations.*
- E. Independent Capacity. The **Municipality**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.
- F. Flow Down. Contracts between the **Municipality** and all consultants, contractors or other third parties shall contain or incorporate by reference all applicable provisions of this Agreement.
- G. No Assignment Without Approval. The **Municipality** 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 **Municipality** from liability under this Agreement.
- H. Binding Effect. The **Parties** shall be bound by the terms of this Agreement. This provision shall apply to the Agreement's executors, their successors, administrators and legal representatives.

ARTICLE 6. TERMINATION

- A. FOR CAUSE. **MaineDOT** may terminate this Agreement for cause in case of one or more occurrences of default defined in section 6.B. The **Municipality** will have a cure period of fourteen (14) calendar days after receiving Notice of Default. If the **Municipality** fails to make a good-faith effort to correct all defaults within the cure period, **MaineDOT** shall terminate this Agreement upon written Notice of Termination for Cause, with the following conditions:
1. The **Municipality** shall stop 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 **Municipality's** failure to correct any occurrence of default, **MaineDOT** reserves the right to recover from the **Municipality** all reimbursements made and **Project** costs incurred.
 3. The **Municipality** shall forfeit all unspent funds from **MaineDOT** remaining in the **Project**.
- B. GROUNDS FOR DEFAULT. The **Municipality** shall be in default if the **Municipality**:
1. Fails to make satisfactory progress in developing the **Project** within twelve (12) months of the effective date of this Agreement.
 2. Takes any action without concurrence from **MaineDOT** that renders the **Project** ineligible for federal funding.
 3. Uses **Project** funds for a purpose other than what is authorized by this Agreement.
 4. Misrepresents or falsifies of any claim for reimbursement.
 5. Fails to meet standards of performance outlined in this Agreement.
 6. Breaches any material provision of this Agreement.
- C. FOR CONVENIENCE. The **Parties** may terminate this Agreement at any time for convenience for any reason not defined as “default.” **MaineDOT** shall notify the **Municipality** through a Notice of Termination for Convenience, with the following conditions:
1. If termination is for any reason other than failure by the **Municipality** to correct any occurrence of default, the **Municipality** will be reimbursed for acceptable, federally eligible work or service accomplished under this Agreement until the effective date of termination. The **Municipality's** share of costs incurred by **MaineDOT** personnel in the development and oversight of the **Project** shall be deducted from amounts due to the **Municipality**.
 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. **MaineDOT** will retain all unspent federal funds in the **Project** for reprogramming.

ARTICLE 7. EXPIRATION

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

ARTICLE 8. DEBARMENT

- A. By signing this Agreement, the **Municipality** 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 **Municipality** is unable to certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **Municipality** shall notify **MaineDOT** promptly if it or 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 **Municipality** agrees that it shall not hire a consultant or contractor who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state agency.

ARTICLE 9. AGREEMENT APPROVAL

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

IN WITNESS WHEREOF, the **Parties** have executed this Agreement effective on the date last signed below.

Municipality 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: _____

I certify that foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my sole control.

ADDITIONAL MUNICIPAL SIGNATURES ARE REQUIRED ON APPENDIX A and B →

**APPENDIX A TO A LOCALLY ADMINISTERED PROJECT AGREEMENT:
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT**

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

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

A) The total compensation and names of the top five executives if:

- More than 80% of the City’s annual gross revenues are from the 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):

Municipality of Bangor, Maine
Sign and Print Legal CCR Name

07-173.9692
DUNS® Number

Authorized Representative: _____
Catherine M. Conlow, City Manager

**Appendix B to a Locally Administered Project Agreement:
Federal Highway Administration Civil Rights Assurance**

The **Municipality** HEREBY CERTIFIES THAT, as a condition of receiving Federal financial assistance, it will ensure that:

1. No person on the basis of race, color, national origin, sex, age or disability will be subjected to discrimination in the level and quality of transportation services and transportation-related benefits.
2. The **Municipality** will compile, maintain, and submit in a timely manner Title VI information requested by the Maine Department of Transportation pursuant to 49 CFR Part 21.9.
3. The Maine **Municipality** will make it known to the public that those people or persons alleging discrimination on the basis of race, color, or national origin as it relates to the provision of transportation services and transportation-related benefits may file a complaint with the Federal Highway Administration and/or the U.S. Department of Transportation.

The person or persons whose signature appears below are authorized to sign this assurance on behalf of the grant applicant or recipient.

Authorized signatory

Date