INFRASTRUCTURE COMMITTEE
Tuesday, July 14, 2015 at 5:15 p.m.
City Hall Council Chambers

Agenda

1. **<u>MDOT Agreement: 19311.00, Webster Avenue Bridge #5796 Improvements</u>**
   (Presentation Provided by City Engineer John Theriault. Council Order, Council Action, Agreement Attached)

2. **<u>Update: Construction Projects</u>**
   (Provided by John Theriault)

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TEDOCS #: _____
CT #: _____
CSN #: _____
PROGRAM: _____

MaineDOT

MAINE DEPARTMENT OF TRANSPORTATION

MUNICIPAL/STATE AGREEMENT

PROPOSED IMPROVEMENTS TO BANGOR, WEBSTER AVENUE BRIDGE #5796

(MaineDOT Use Only)

Project Location: Bangor	Estimated Municipal Share: $0.00
State WIN #: 19311.00	Vendor Customer #: BANGOR
Federal Aid Project #: AC-IM-1931(100)E	Agreement Begin Date: _____
	Agreement End Date: (3 years from the date last signed below)

This Agreement is entered into between the Maine Department Of Transportation (hereafter the "Department") and the City of Bangor, a municipal corporation located in the County of Penobscot (hereafter the "Municipality") (hereinafter the "Parties") regarding the planning, development, design, right of way, construction, cost sharing and reimbursement for a project to make improvements to Webster Avenue, in City of Bangor, Maine, (hereafter Project) as follows:

The following checked appendices are hereby incorporated into this Agreement by reference:

- ☒ Appendix A – Project scope, cost sharing, and payment schedule
- ☐ Appendix B – Bicycle/Pedestrian Facility Maintenance
- ☐ Appendix B – Landscape Maintenance
- ☒ Appendix B – Lighting/Flashing Beacon Operation and Maintenance
- ☐ Appendix B – Traffic Signal Operation and Maintenance
- ☐ Appendix B – Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☐ Appendix C – Additional work requested by Municipality

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

B. The Department shall be the sole administrator of this contract. The Department will pay all project costs, subject to cost sharing by the Municipality, when applicable, as specified in this agreement. Neither the Department nor its contractors will be required to pay for inspections and permits from the Municipality.

C. The Department reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. The Department also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project because of any failure by the Municipality to meet any of the conditions and stipulations set forth in this Agreement.

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

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

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

1. The PM will submit the project for Traffic Analysis and Movement Evaluation (TAME), when possible, approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed project with the Municipality (scope, limits, day or night work, work window, etc).

2. The Municipality will comment on their concerns/issues (two week timeframe allowed).

3. The PM & Designer will incorporate these comments where practical based on engineering judgment.

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

5. The Municipality will have the opportunity to review and comment.

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

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

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

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

K. The Municipality agrees that except for an emergency, or as allowed in § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any city government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by the Department in its most recent *"Rules, Regulations and Policies for Highway Openings"*, which is incorporated herein and made a part hereof by reference.

L. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition.

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

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

O. The Municipality with city council approval agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

P. The Department shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to the Department's option to withhold for the purposes of set-off any monies owed to the Municipality with regard to this Agreement and any other agreement with the Department, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts owed to the Municipality for any other contract with any State of Maine department or agency.

Q. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless the Department, its officers, agents and employees from all claims, suits or liabilities arising from any 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 any other privileges or immunities provided by law. *Any other provision of this agreement to the contrary notwithstanding, this provision shall survive any termination or expiration of this Agreement.*

R. The Department may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by

the Department or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to the satisfaction of the Department.

In the event of Project termination, all provisions of this Agreement shall become null and void except for those set forth under ***Appendices A and C, if attached to this Agreement, as well as those provisions that by their very nature are intended to survive.***

S. The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

T. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

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

V. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by the Department manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.

W. No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of the Department.

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

City of Bangor	MAINE DEPARTMENT OF TRANSPORTATION
By: _____	By: _____
Catherine Conlow, City Manager	Michael Wight, P.E.
_____	_____
(Date Signed)	(Date Signed)

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

APPENDIX A

PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION

MUNICIPAL/STATE AGREEMENT

Transportation Improvement Project

MUNICIPALITY OF City of Bangor

PROPOSED IMPROVEMENTS TO Webster Avenue

FEDERAL AID PROJECT NO. AC-IM-1931(100)E

STATE PROJECT IDENTIFICATION NUMBER (WIN) 19311.00

Project Scope: Removal of Webster Avenue Bridge #5796 in Bangor which carries I-395 over Webster Avenue and replacing it with a buried pedestrian/bicycle tunnel. The Department will install, at the Department's expense, lighting in the tunnel and tunnel approaches. The City of Bangor will be responsible for all future maintenance and electrical supply of the installed lighting.

Funding Outline: The Total Project Estimated Cost is $ 2,615,000.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share						Total Cost
			Fed Entity	Portion		MaineDOT (State) Portion			
	%	$	%		$	%		$	$
Preliminary Engineering	0.0%	$ -	90.0%	$	315,000.00	10.0%	$	35,000.00	**$ 350,000.00**
Right of Way	0.0%	$ -	90.0%	$	27,000.00	10.0%	$	3,000.00	**$ 30,000.00**
Construction	0.0%	$ -	90.0%	$	1,831,500.00	10.0%	$	203,500.00	**$ 2,035,000.00**
Construction Engineering	0.0%	$ -	90.0%	$	180,000.00	10.0%	$	20,000.00	**$ 200,000.00**
PROJECT SHARES		$ -		$	2,353,500.00		$	261,500.00	**$ 2,615,000.00**
Total Cost of Additional Work Requested by Municipality (Below)		$ -							
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		$ -							

(Check if applicable)

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

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

Additional Work	Cost: 100% Municipal Share
TYPE OF WORK	$ -
TYPE OF WORK	$ -
TYPE OF WORK	$ -
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY	$ -

Payment:

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

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

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

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

Entity Name	Receivable Amount	Estimated Invoice Date
City of Bangor	zero dollars	not applicable

APPENDIX B
PERPETUAL MAINTENANCE OF BRIDGE LIGHTING AND APPROACH LIGHTING & SNOW PLOWING

MAINE DEPARTMENT OF TRANSPORTATION

MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF City of Bangor

PROPOSED IMPROVEMENTS TO Webster Avenue

FEDERAL AID PROJECT NO. AC-IM-1931(100)E
STATE PROJECT IDENTIFICATION NUMBER (WIN) 19311.00

A. The **DEPARTMENT** agrees to inspect and maintain the bridge, including seasonal cleaning, upon completion of the construction of the **PROJECT**, with the exception of snow removal and lighting as noted herein.

B. The **MUNICIPALITY** agrees to operate and maintain the bridge lighting and approach lighting installed under the **PROJECT** in such a manner as is necessary to preserve the use and function thereof as designed and intended by the **PROJECT** as follows:

1. The **MUNICIPALITY** shall expeditiously repair or correct all malfunctions and deficiencies with the wiring and the luminaires in the bridge lighting and approach lighting. Any failure to correct the bridge lighting and approach lighting to function as designed could, upon written notification from the **DEPARTMENT**, result in the **DEPARTMENT** making all necessary repairs at the **MUNICIPALITY's** expense.

2. The **MUNICIPALITY** agrees to be responsible for the electrical service for the bridge lighting and approach lighting and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for the installation of such service.

3. The **MUNICIPALITY** shall preserve and maintain the visibility of the bridge lighting and approach lighting at all times by removing all visual impairments thereto.

4. The **MUNICIPALITY** shall make no operational changes or modifications to the bridge lighting and approach lighting without the express written approval of the **DEPARTMENT**.

5. The **MUNICIPALITY** shall notify the **DEPARTMENT** in writing prior to any removal or replacement of the bridge lighting and approach lighting.

6. The **MUNICIPALITY** agrees to maintain the bridge lighting and approach lighting with equipment technology equal to or greater than what has been installed.

C. SNOW PLOWING

The **MUNICIPALITY** agrees to remove snow from all sidewalks built as part of the **PROJECT**. Responsibility for snow removal from the roadways built as part of the PROJECT will in accordance with 23 MRSA §1001.

_____**COUNCIL ACTION**_____

Item No._____

Date: July 27, 2015

Item/Subject: ORDER, Authorizing Execution of Agreement for Maine Department of Transportation Local Project – 19311.00, Webster Avenue Bridge #5796 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 the removal of Webster Avenue Bridge #5796 which carries I-395 over Webster Avenue and replacing it with a buried pedestrian/bicycle tunnel with lighting and tunnel approaches. The Maine Department of Transportation has approved federal and state funds in an amount not to exceed $2,615,000.00 which includes a Federal share of $2,353,500.00 or 90% of construction costs, State share of $261,500.00 or 10% of construction costs, and a City share of funding of $0.00.

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 July 14, 2015 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
_X_ 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 #19311.00, Webster Avenue Bridge #5796 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 – Webster Avenue Bridge #5796 Improvements

Copy of the agreement is attached.