

Order 152-21/22

Motion to postpone to March 21, 2022: 9-0 on 3/7/2022

Motion to amend to add the word "revised" and attached the revised agreement: 9-0 on 3/21/2022

Passage as amended: 9-0 on 3/21/2022

Effective 3/31/2022

KATE SNYDER (MAYOR)
ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

**ORDER APPROVING THE TWO-PARTY AGREEMENTS
BETWEEN THE MAINE DEPARTMENT OF TRANSPORTATION
AND THE CITY OF PORTLAND
RE: FOREST AVENUE PAVING**

ORDERED, that the revised Two-Party Agreements between the Maine Department of Transportation and the City of Portland are hereby approved, in substantially the forms attached, for paving and other work on Forest Avenue:

- WIN 24997.00, Proposed Improvements to Forest Avenue

BE IT FURTHER ORDERED, that the Interim City Manager or her designee is hereby authorized to sign the two-party agreements and any other documents necessary to effect the purpose of this order.



MaineDOT use only	
CTM #:	_____
CSN #:	_____
PROGRAM:	<u>Highway Program</u>

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
PROPOSED IMPROVEMENTS TO FOREST AVENUE

(MaineDOT Use Only)

Project Location: Portland
State WIN #: 24997.00
Federal Aid Project #: 2499700

Estimated Municipal Share: \$116,285.00
Vendor Customer #: 17A12984
Agreement Begin Date: _____
Agreement End Date: (5 years from the date last signed below)

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

RECITALS

- A. The scope of work that is the subject of this Agreement consists of making improvements to Forest Avenue, beginning at Congress Street and extending north 0.28 of a mile to Park Avenue, in Portland, Maine, (hereafter the “Project”).
- B. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project’s Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

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

- D. The following checked appendices are hereby incorporated into this Agreement by reference, and any perpetual maintenance appendices shall survive the expiration of this Agreement:
 - ☒ Appendix A – Project scope, cost sharing, and payment schedule (*not required for non-monetary agreements.*)
 - ☐ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
 - ☐ Appendix B – Perpetual Drainage Maintenance
 - ☐ Appendix B – Perpetual Landscape Maintenance
 - ☐ Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Maintenance
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Shared Maintenance

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

E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. When applicable, refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
3. The Municipality agrees that MaineDOT and its contractors are exempt from all local ordinances, including but not limited to the Municipality Noise Ordinance.
4. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

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

G. Traffic Control:

6. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - i. MaineDOT's Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).

- ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.
- iii. MaineDOT's PM & Designer will incorporate these comments where practical based on engineering judgment.
- iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.

H. Utilities:

- 7. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.
- 8. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.
- 9. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.

I. Governing Law:

- 10. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.
- 11. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality's Responsibility:

- 12. When applicable, if the Municipality withdraws its financial support for the Project, leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for all

Project costs incurred in reliance on the Municipality's financial obligations outlined herein, including, but not limited to, reimbursement of all federal and state funds expended up to the time of such termination. If the Municipality fails to reimburse MaineDOT for such costs incurred, after receiving an invoice seeking such reimbursement, MaineDOT may exercise its rights of set-off to recover the requested amount.

13. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
14. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition including snow and ice control.
15. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
16. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
17. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

18. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.
19. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction.

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

L. Miscellaneous Provisions:

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

debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

21. All provisions of this Agreement, *except those that by their very nature are intended to survive*, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
22. **State of Maine's Rights of Set-Off.** MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller. When applicable, MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.
23. **Non-Appropriation.** Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
24. **Assignment.** No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.
25. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and may be sent via email which shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Alternatively, communications can be mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
 24 Child Street
 16 State House Station
 Augusta, ME 04333-0016
 Attn.: LaRay L. Hamilton
 Email: laray.hamilton@maine.gov

Municipality: City of Portland
389 Congress Street #208
Portland, ME 04101
Attn.: Danielle P. West
Email: citymanager@portlandmaine.gov

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

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Danielle P. West, Interim City Manager

By: _____
Richard J. Crawford, P.E., Director
Bureau of Project Development

(Date Signed)

(Date Signed)

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

DRAFT

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

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE

FEDERAL AID PROJECT NO. 2499700

STATE PROJECT IDENTIFICATION NUMBER (WIN) 24997.00

Project Scope:

Mill & Fill on Forest Avenue, beginning at Congress Street and extending north 0.28 of a mile to Park Avenue.

Funding Outline:

The Total Project Estimated Cost is \$ 313,010.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering Line 1	25.0%	\$ 2,325.00	75.0%	\$ 6,975.00	0.0%	\$ -	\$ 9,300.00
Preliminaary Engineering Line 2	100.0%	\$ 10,700.00		\$ -		\$ -	\$ 10,700.00
Right of Way	25.0%	\$ -	75.0%	\$ -	0.0%	\$ -	\$ -
Construction Line 1	25.0%	\$ 58,575.00	75.0%	\$ 175,725.00	0.0%	\$ -	\$ 234,300.00
Construction Line 2	100.0%	\$ 34,710.00		\$ -			\$ 34,710.00
Construction Engineering Line 1	25.0%	\$ 4,675.00	75.0%	\$ 14,025.00	0.0%		\$ 18,700.00
Construction Engineering Line 2	100.0%	\$ 5,300.00		\$ -			\$ 5,300.00
PROJECT SHARES		\$ 116,285.00		\$ 196,725.00			\$ 313,010.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%						
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 116,285.00					

(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	
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY		\$	-

Payment:

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

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project.

Invoicing will include the following:

- a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
- b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
- c. 100% of all additional work requested by the Municipality.

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

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

Municipality Name	Receivable Amount	Estimated Invoice Date
City of Portland	\$84,660.00	5/1/2022
City of Portland	\$31,625.00	8/1/2022
City of Portland	Balance	9/1/2023
Total Receivable Amount:	\$116,285.00	

TEDOCS #: _____

CT#: _____

CSN#: _____

Program: Highway Program

MAINE DEPARTMENT OF TRANSPORTATION UTILITY RECEIVABLE AGREEMENT

(MaineDOT Use Only)

Project Location: Portland

State WINs #: 024997.00

Federal Aid Project #: 2499700

Estimated Agreement Amount: \$ 16,800.00

Vendor Customer #: 17A12144

MaineDOT Signed Date: _____

Forecasted Agreement End Date: October 31, 2022

THIS AGREEMENT entered into the last date signed herein at the end of this agreement, between the **Maine Department of Transportation** (hereafter the “Department”) and **City of Portland**, duly authorized and existing under the Laws of the State of Maine and having an office in the City of **Portland**, County of **Cumberland** (the “Utility”) (the Department and the Utility are collectively referred to as the “Parties”).

1. The Department is implementing a transportation project identified as “Federal Aid Project Number **2499700**; WIN: **024997.00** (the “Project”) for highway improvements in the City of **Portland, Cumberland** County;

2. In connection with the Project, the Department has prepared plans and specification for the Project that resulted in the following determination:

X The Department has identified the locations of existing utility facilities owned and maintained by the Utility and lawfully installed within the limits of the public highway right-of-way and the impact limits of the Project that must be relocated to accommodate the Project (the “Affected Facilities”).

_____ The Utility has expressed an interest in installing new utility facilities within the limits of the public highway right-of-way and the impact limits of the Project (the “Affected Facilities”).

3. **Project Scope:** Affected facilities consist of **six (6)** Sewer Manholes on Forest Avenue, **one (1)** of which needs to be **Rebuilt**, **one (1)** of which needs to be **Modified**, and **four (4)** of which need to be **Adjusted**. The City of Portland will provide all new frames and covers, if needed. Exact locations may be found within the Construction Notes. Old and unused frames and covers will be returned to the City for disposal.

4. The Utility has prepared and provided to the Department the scope of work necessary for relocating or installing the Affected Utilities (the “Utility Work”) and the estimated costs associated therewith, which are outlined in **Appendix A**, attached hereto, and made a part hereof. The costs associated with the Utility Work are the sole responsibility of the Utility.
5. The Parties wish to establish a process for including the Utility Work in the Department’s construction contract for the Project.

NOW, THEREFORE, the Parties agree as follows:

6. Plans, Specifications and Estimate:

- a. The Utility shall, at its own expense, perform and provide all engineering, design and related services related to the Utility Work necessary to enable the Department and/or its consultant to generate construction plans, specifications and an estimate of material quantities for the Utility Work to be included in the Project contract. The Utility will be responsible for locating and recording the location of all Utility Work, including services and other appurtenances within the Project area. To the extent possible and consistent with laws, practices and policies of the Department and the industry, the Utility Work shall be performed in accordance with the plans and specifications provided by the Utility and, if applicable, the most recent version of the Department’s Standard Specifications.
- b. All plans shall be on sheets of the same size used by the Department and be reproducible by black and white printing. Specifications shall be on 8 ½ x 11-inch paper, suitable for binding with the Department’s specifications. The estimate of quantities shall be in the form prescribed by the Department. In the event of field changes to the Utility Work, the Utility shall prepare any additional plans and specifications and the Department shall prepare a Project change order and amend this Agreement incorporating any changes therein. All plans and specifications will be marked with the Federal Aid Project Number referenced in this Agreement.
- c. The Utility will provide the Department with the plans, specifications and an updated estimate as described in Appendix A no later than one month prior to the scheduled advertise date for the Project.
- d. The Utility shall be responsible for obtaining a Utility Location Permit from the Department in accordance with Title 35-A M.R.S.A. Chapter 25 and for recording the location of all utilities in a manner and form to be specified by the Department.
- e. **Standard Approach:** The Department will prepare the Project contract documents to include the Utility Work specified in Appendix A. The Utility agrees to have these items included in the Department’s Project construction contract. Bidders will be required to bid both the Project work and the Utility Work. The Utility Work will be paid for by the Utility, and any changes that increase the Utility Work estimate or

amount will be paid for through a written modification of this agreement approved by both the Utility and the Department.

7. Inspection:

- a. The Utility shall be responsible for providing all engineering and inspection associated with the Utility Work including computing quantities for payment and other incidental and related work unless otherwise stated herein. By the end of each work day, whenever Utility Work is performed, the Utility will provide the Department's on-site representative with an itemized summary of all the Utility Work completed.
- b. The Department shall provide inspection of the quality and compaction of backfill installed in connection with the construction contract, excluding bedding and other special backfills and materials used in the installation of the Utility Work.
- c. If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to the following:
 - i. Should the Utility find the Project contractor's materials or workmanship to be insufficient in any way, the Utility agrees to inform the Department's on-site representative as soon as possible, but no later than the end of the day in which the problem is identified.
 - ii. As administrator to the construction contract, the Department's on-site representative shall be responsible for authorizing all payments relating to the Utility Work, issuing all directives to the Project's contractor and making the final determination in the event of any disagreements.

8. Ownership of Completed Utilities: Upon completion of the Utility Work the Utility shall assume complete ownership of, and responsibility for, the utility facilities installed in connection with the Utility Work.

9. Claims: The Utility shall be responsible for the prompt review and settlement of any claims arising from or related to the Utility Work or its impact on the Project.

10. Indemnification: The Utility shall indemnify, defend and hold harmless the Department and its officers, employees, agents and assigns, from and against any and all claims, liability or expenses, including but not limited to reasonable attorney's fees and litigation costs (the "Claims"), to the extent such Claims are caused, or alleged to have been caused, by acts or omissions of the Utility or any of its officers, employees, agents, representatives, supervisors, contractors, subcontractors or consultants in connection with the performance of its obligations under this Agreement. Nothing in this Agreement is intended or shall be

construed to waive any defense, immunity or limitation of liability that may be available to the Department or the Utility pursuant to the Maine Tort Claims Act (14 M.R.S. § 8101 *et seq.*) or any other privileges or immunities provided by law. The terms outlined in this section shall survive any termination or expiration of this Agreement.

11. **Buy America Requirements:** This agreement is subject to the requirements of Buy America in accordance with Federal Regulation 23 CFR 635.410 Section 1518. Specific requirements are presented in MaineDOT Standard Specification Section 100, Appendix A, Section 3.A., Buy America which are incorporated and made a part hereof by reference.
12. **Subsequent Excavations and/or Installations:** Except in the case of an emergency, the Utility acknowledges and agrees to refrain from applying for a permit for the excavation of the highway within the limits of the Project for a period of at least **three (3)** years following the completion of the Project and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. In all cases, whether an excavation moratorium as described above applies, or as in the case of Light Capital Paving projects where no excavation moratorium applies, the Utility further acknowledges and agrees that all subsequent excavations and/or installations within the right-of-way of the Project limits shall be regulated and controlled in the manner specified by the most recent version of the Department's "*Utility Accommodation Rules*", which are incorporated and made a part hereof by reference. The terms outlined in this section shall survive any termination or expiration of this Agreement.
13. **Non-Appropriation and Termination:** Anything herein to the contrary notwithstanding, the Utility acknowledges and agrees that, although the execution of this Agreement by the Department manifests the Department's 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 the Department in excess of such appropriations. In the event of unanticipated impacts on the Project, such as, changes in the Project design, or a loss in Project funding, or a delay in advertising or awarding of the contract, the Department may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Utility and in no event shall any such action be deemed a breach of contract.
14. **Payment:** If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to reimburse the Department for the full amount of the cost of the utility work. A detailed breakdown of the anticipated cost of the Utility Work is attached hereto and incorporated herein as Appendix A. The Department will issue a final invoice after all the Utility Work is complete, all quantities are verified, and any required adjustments have been made. The Department, at its sole discretion, may issue periodic invoices for portions of the Utility Work as it is being completed. The final invoice will include any

remaining costs or credits. The Utility shall submit payment to the Department within 30 days from the invoice date.

15. Contact Information:

For the Department:		For the Utility:	
Name:	Mark McCue	Name:	Brad Roland
Address:	16 State House Station Augusta, ME 04330	Address:	212 Canco Rd. Portland, ME 04103
E-mail:	mark.j.mccue@maine.gov	E-mail:	brad@portlandmaine.gov
Telephone:	(207) 446-8474	Telephone:	(207) 874-8840

16. No Relief of Responsibilities: Nothing in this agreement is intended, nor shall be interpreted, to relieve the Utility of any responsibilities or duties imposed upon it by law.

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

CITY OF PORTLAND

By: _____

Print Name: Danielle West

Title: Acting City Manager
Duly Authorized

DATE: _____

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

By: _____

Print Name: LaRay Hamilton

Title: Senior Project Manager
Duly Authorized

DATE: _____

APPENDIX A

PROJECT SCOPE

MAINE DEPARTMENT OF TRANSPORTATION UTILITY RECEIVABLE AGREEMENT

City of Portland
Forest Avenue

FEDERAL AID PROJECT NOs. **2499700**
STATE PROJECT IDENTIFICATION NUMBER (WINs) **024997.00**

Project Scope: Affected facilities consist of **six (6)** Sewer Manholes on Forest Avenue, **one (1)** of which needs to be **Rebuilt**, **one (1)** of which needs to be **Modified**, and **four (4)** of which need to be **Adjusted**. The City of Portland will provide all new frames and covers, if needed. Exact locations may be found within the Construction Notes. Old and unused frames and covers will be returned to the City for disposal.

ESTIMATE OF UTILITY WORK:

Item #	Pay Item	Estimated Quantity /Unit	Unit Price	Utility Cost
812.162	Adjusting Sewer Manholes to Grade	4 / ea.	\$2,000.00	\$8,000.00
812.163	Modify Sewer Manhole & Adjust to Grade	1 / ea.	\$2,800.00	\$2,800.00
812.164	Rebuild Sewer Manhole & Adjust to Grade	1 / ea.	\$6,000.00	\$6,000.00
Total Cost:				\$16,800.00

ESTIMATED PAYMENT SCHEDULE:

Utility	Payment Amount	Estimated Invoice Date
City of Portland	Final Quantities	10/31/2022