

Order 34 -05/06

Passed: 8/21/06 7-0 (Leeman, Suslovic absent)

JAMES I. COHEN (MAYOR)(5)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)
EDWARD J. SUSLOVIC (A/L)

**ORDER APPROVING CITY-STATE
AGREEMENTS WITH MAINE DEPARTMENT OF TRANSPORTATION
RE: RE-PAVING OF AUBURN STREET**

ORDERED, that the attached City-State Agreements with the Maine Department of Transportation for the re-paving of Auburn Street from North Gate Shopping Center to the MCRR and the Presumpscot Bridge are hereby approved, substantially in the form attached.

PIN No. 11431.00 100% MDOT Funding (\$367,000)
PIN No. 11586.00 85% MDOT Funding (\$327,675); 15% City Share (\$57,825)

Portland - LOCAL PROJECT AGREEMENT
Auburn St. - PIN (11431.00)

LOCAL PROJECT AGREEMENT

between the

CITY of PORTLAND

and the

State of Maine, Department of Transportation

**Federal Project Number STP-1143(100)X,
State PIN (11431.00)**

This AGREEMENT is made this ____ day of _____, 2006, by and between the Department of Transportation, an agency of the State of Maine, having its principal office in Augusta, County of Kennebec, State of Maine {hereinafter called the **DEPARTMENT**}, and the CITY of PORTLAND, a municipal corporation and body politic, having its principal office in the CITY of PORTLAND, County of Cumberland, State of Maine {hereinafter called the **CITY**}.

W I T N E S S E T H

WHEREAS, the project described herein was selected by the **DEPARTMENT** for inclusion in its 2006-2007 Biennial Transportation Improvement Program for partial funding; and,

WHEREAS, this AGREEMENT sets out the terms and conditions of the **DEPARTMENT**'s Federal & State funding to the **CITY**;

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

When used within this AGREEMENT, the terms listed below shall have the following meaning:

Project: The work to develop and construct a Level II Highway Resurfacing on Auburn Street beginning at North Gate Shopping Center and extending northerly 1.72 miles to MCRR and Presumpscott Bridge to be performed by or for the **CITY** and accepted by the **DEPARTMENT**, as amended from time to time {hereinafter called the **PROJECT**}. The **DEPARTMENT** will participate in the funding of the **PROJECT**, at the cost sharing rate described in ARTICLE III, A , up to a maximum of Three Hundred and Sixty seven thousand Dollars (\$367,000) in federally eligible project costs as described in ARTICLE II Section N and ARTICLE III..

Project Coordinator: The person designated by the **CITY** to coordinate and manage all local responsibilities regarding the **PROJECT**. This individual also serves as the municipal liaison with the **DEPARTMENT**.

Project Manager: The person designated by the **DEPARTMENT** to coordinate and manage all State responsibilities regarding the **PROJECT**. This individual also serves as the State liaison with the **CITY**.

ARTICLE II. PROJECT DEVELOPMENT

A. The **CITY** shall submit an acceptable line item budget containing an itemization of estimated **PROJECT** costs to the **DEPARTMENT** for approval.

1. Once such a budget is approved by the **DEPARTMENT**, expenditures may not exceed any single cost category or budget line item amount by more than ten percent {10%} without the **DEPARTMENT**'s approval.

2. In no event shall the total of all **PROJECT** expenditures exceed the total amount authorized for the **PROJECT** as hereinafter provided in Section N of this ARTICLE II.

B. The **CITY** shall not perform or authorize any services or work under this AGREEMENT without first receiving the express approval to do so in writing from the **DEPARTMENT**.

1. Such approval shall be contingent upon the **DEPARTMENT** receiving authorization from the Federal Highway Administration {hereinafter called the **FHWA**} for Federal participation in the **PROJECT** costs. The **DEPARTMENT** shall not unreasonably withhold such approval.

2. All costs incurred by the CITY prior to receiving such approval from the DEPARTMENT shall be ineligible for Federal participation and, therefore, not reimbursable by the DEPARTMENT under the provisions of ARTICLE III. Any such ineligible costs may not be credited to the CITY's matching share responsibilities for the non-Federal portion of PROJECT costs.

C. The **DEPARTMENT** shall develop and prepare all of the necessary design plans, specifications, estimates and contract documents for the **PROJECT**, in accordance with the **DEPARTMENT**'s standards and procedures for procuring construction contracts for Federal-aid projects.

D. The **CITY** may contract for engineering and design services, as necessary, to develop, design or construct the **PROJECT**, provided:

1. The selection and retention of any individual or firm to provide or furnish any engineering or design related services for the **PROJECT** shall be based upon qualifications in accordance with the **DEPARTMENT**'s consultant selection and retention procedures.

2. No contract for such services shall be awarded without the express written approval of the **DEPARTMENT** pursuant to the provisions set forth under Part 172 of Title 23 in the United States Code of Federal Regulations {CFR}, specifically those provisions set forth under Section 172.5(d).

- a. The **CITY** shall specifically monitor all work performed under any such contract pursuant to the provisions of 23 CFR 172.13.
- b. The **DEPARTMENT** may accept or reject any work performed or procured under any such contract pursuant to the provisions of 23 CFR 172.5(d).

E. The **CITY** shall develop and prepare all environmental studies and reports for the **PROJECT**. All such studies and reports shall be submitted to the **DEPARTMENT** for review.

F. The **DEPARTMENT** shall prepare and submit to the **FHWA**, for concurrence, all environmental documentation required for the **PROJECT** under the provisions of the “*National Environmental Policy Act*” (NEPA).

G. The **City** shall be responsible for all necessary utility coordination and shall certify to the **DEPARTMENT** that all utilities potentially affected by the proposed highway improvements have been notified and offered plans to the proposed improvements. Prior to the approval of final plans as hereinafter provided, the **CITY** shall certify to the **DEPARTMENT** that all necessary utility adjustments or relocation have been coordinated within the affected **PROJECT** limits as per the **DEPARTMENTS** "Utility Accommodation Policy".

H. The **CITY** shall obtain all approvals, permits and licenses required to construct the **PROJECT**.

I. The **CITY** shall provide for public participation in the development of the **PROJECT**.

- a. The **CITY** agrees to make all necessary notifications, of the **PROJECT**, to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351.

- b. The use of all public land under the ownership or control of the parties hereto shall be made available for all purposes necessary or incidental to the **PROJECT** without any cost to the **PROJECT**.

1. The **DEPARTMENT** shall retain all right, title and interest that it presently holds in and to any of the property used for the **PROJECT**.

2. Any municipal property that is used for the **PROJECT** shall be dedicated for public use, *in perpetuity*, by the **CITY**.

- a. Such dedication shall include a suitable monumented boundary and an engineering description sufficient to locate and define such land with ties to a reproducible control line.

- b. The **CITY** shall forward to the **DEPARTMENT** a copy of such dedication, with description, prior to being authorized to solicit bids for construction of the **PROJECT**.

3. The **CITY** shall acquire and furnish any additional right-of-way necessary to construct and maintain the **PROJECT**.

a. All such rights-of-way shall be acquired in accordance with the “*Uniform Relocation Assistance and Real Property Acquisition Act of 1970*” as amended by the United States Congress in 1987 (the Uniform Act) pursuant to the provisions set forth under 49 CFR Part 24.

b. The **CITY** or its consultant shall follow the “*Real Estate Acquisition Guide for Local Public Agencies*” published by the **FHWA**.

c. All such rights-of-way shall be acquired prior to advertising for construction bids and shall be held *inviolata* from all encroachments. The **CITY** shall certify in writing to the **DEPARTMENT** that all such rights-of-way have been acquired prior to being allowed to solicit bids as herein provided in Paragraph J of this ARTICLE.

d. The **CITY** agrees to keep the right-of-way of the **PROJECT**, within the DOT Urban Compact, inviolate from all encroachments and agrees to remove, or cause to be removed, any private installation, advertising sign, device or fixture which may encroach thereon.

4. The **CITY** shall furnish to the **DEPARTMENT** a right-of-way map or similar plan prepared in accordance with the **DEPARTMENT**'s specifications detailing all right-of-way acquired for, donated to or dedicated to the **PROJECT**.

5. The **CITY** shall develop and implement a maintenance plan acceptable to the **DEPARTMENT** which assures an appropriate level of maintenance necessary to maintain the improvements constructed under the **PROJECT** in order to preserve the use and function thereof as intended by the **PROJECT** and this AGREEMENT.

a. The **CITY** agrees to prohibit the excavation of the highway within the DOT Urban Compact limits of the **PROJECT** for a period of at least five (5) years after completion of the **PROJECT**, except for any emergency which will fall under provision 23 M.R.S.A. § 3351-A.

b. The **CITY** agrees to maintain, within the DOT Urban Compact limits, all improvements and fixtures constructed, installed or furnished as a part of the **PROJECT** in such a manner as is necessary to preserve the use and function thereof as intended by the **PROJECT**.

c. The **CITY** agrees to, within the DOT Urban Compact limits, regulate all entrances to the highway within the limits of the **PROJECT** in accordance with the provisions of 23 M.R.S.A. § 704.

J. Upon written approval of the **DEPARTMENT**, the **CITY** shall solicit for competitive bids. The **CITY** shall award a contract to construct the **PROJECT** as follows:

1. Competitive bids shall be solicited to construct the **PROJECT** in accordance with the plans and specifications approved by the **DEPARTMENT**.

2. Such solicitation and all procedures pertaining to the procurement of such a contract shall be in accordance with the **DEPARTMENT**'s procurement policy and procedures for Federal-aid projects, unless otherwise approved in writing by the **DEPARTMENT**.

3. Both the **CITY** and the **DEPARTMENT** shall have the right to accept or reject any and all bids received as a result of such solicitation.

4. The **CITY** shall not award any such contract without the express written approval of the **DEPARTMENT**.

5. Any construction contract shall specify that the **PROJECT** be constructed in compliance with the latest edition of the **DEPARTMENT**'s "*Standard Specifications (December 2002)*" and other applicable special provisions.

6. Upon award, the **CITY** shall arrange for a preconstruction meeting to coordinate the construction of the **PROJECT** with the Project Manager, the Contractor, and any and all utilities and other parties directly involved in such construction.

K. The **CITY** shall administer any construction contract and provide all of the necessary supervision, inspection and documentation required to insure that the **PROJECT** is completed satisfactorily in accordance with the plans, specifications and provisions of such contract.

1. The **CITY**'s Project Coordinator or his/her qualified designee shall be in responsible charge of the **PROJECT**, at all times.

2. The **CITY** shall use procedures acceptable to the **DEPARTMENT** to document the quantity and quality of all work performed under this AGREEMENT in an accurate and consistent manner. The **CITY** shall submit construction progress reports to the department weekly. All documentation, including all source documents used as the basis of payment for such work, shall become part of and shall be kept with the **PROJECT** record and retained as hereinafter provided under ARTICLE IV, Paragraph A.

3. The **CITY** shall provide for all testing required for the **PROJECT**.

4. Traffic throughout all work areas of the **PROJECT** shall be controlled in accordance with the provisions of Part VI of the "*Manual on Uniform Traffic Control Devices for Streets and Highways*" {MUTCD}, as published by the **FHWA**.

5. Any work involving force account procedures shall require the express written approval of the **DEPARTMENT** prior to so doing.

6. Upon completion of the **PROJECT**, the **CITY** shall provide compliance certification that the **PROJECT** was constructed, quantities were measured and documented, and materials were tested in accordance with the plans, specifications and provisions of the construction contract, and in accordance with the policies and procedures approved by the **DEPARTMENT**.

L. The **DEPARTMENT** may inspect construction activities and all documentation pertaining thereto at any time during the period of construction and may test any of the materials used therein to ensure compliance with the provisions and specifications of the construction contract. The **DEPARTMENT** may reject any work or materials not in such compliance. Upon completion of the construction, the **DEPARTMENT** will inspect the **PROJECT** to determine the acceptability thereof prior to paying any final claim for reimbursement of **PROJECT** costs as hereinafter provided under ARTICLE III, Paragraph C.2.

M. Upon completion of construction, the **CITY** shall provide the **DEPARTMENT** with a set of reproducible *as-built* plans of the **PROJECT** on Mylar or equivalent archival quality material acceptable to the **DEPARTMENT** suitable for permanent filing.

N. The **CITY** shall make no changes in the scope or objectives of the **PROJECT**, or any of the costs thereof other than as hereinafter provided without the express written approval of the **DEPARTMENT**.

1. An approved change or extra work order shall be required to increase the cost of the **PROJECT** whenever expenditures are expected to exceed any approved single cost category or budget line item amount by more than ten percent {10% } or whenever the total of all participating **PROJECT** costs, as hereinafter defined under ARTICLE III, Paragraph A, is expected to exceed the sum of (\$367,000). In no event shall the total of all such p Three Hundred and Sixty seven thousand Dollars anticipating **PROJECT** costs exceed the sum of (Three Hundred and Sixty seven thousand Dollars (\$367,000), without the express written approval of the **DEPARTMENT**.

2. An approved change or extra work order shall also be required to revise, modify or change the scope or objectives of the **PROJECT** or any cost sharing or reimbursement provisions set forth herein, to extend or shorten the period of this AGREEMENT or to change any of the other terms set forth herein.

O. The **CITY** shall assure that all work undertaken by the **CITY** or any of its consultants pursuant to this AGREEMENT conforms to all applicable Federal, State and local laws. In part, Federal laws and regulations covering such work are set forth under Title 23 in the United States Code {USC} for applicable statutory law and 23 CFR for applicable administrative law. General administrative requirements relative to Federally funded activities are also contained under 49 CFR, Part 18 entitled, "*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*". Allowability for participating costs is set forth and described in the Executive Order of the President of the United States' Office of Management and Budget {OMB} Circular A-87 entitled, "*Cost Principles for State and Local Governments*".

ARTICLE III. COST SHARING & REIMBURSEMENT PROCEDURES

A. A portion of the cost to conduct the **PROJECT** shall be provided by the **DEPARTMENT** using State and Federal funds available to it through the **FHWA** at the approximate rate of one hundred percent {100% } of all **PROJECT** costs deemed eligible for Federal participation in accordance with all applicable Federal laws and regulations as hereinbefore referenced under ARTICLE II, Paragraph O.

B. The **CITY** shall be responsible for all of the non-Federal/State or matching share of all participating **PROJECT** costs including all costs incurred by the **DEPARTMENT** for the **PROJECT**. The **CITY** shall be responsible for **all PROJECT** costs deemed ineligible for Federal participation, including those as hereinbefore provided under **ARTICLE II**, Paragraph B.2 and as hereinafter provided under Paragraph C.4., unless otherwise agreed to in writing as hereinbefore provided under **ARTICLE II**, Paragraph N.2.

C. The **DEPARTMENT** shall **reimburse** the **CITY** for all the Federal share of all participating **PROJECT** costs hereinbefore described under Paragraph A, as follows:

1. The **CITY** shall bill the **DEPARTMENT** no less than monthly for all claims for all allowable direct and actual **PROJECT** costs incurred under the provisions of this **AGREEMENT**. Costs are incurred whenever work is performed, goods and services are received or a cash disbursement is made. All claims for such costs shall be submitted on the **CITY**'s billhead or invoice and be itemized in at least the same detail as itemized in the approved **PROJECT** budget. Each claim so submitted shall include an accumulative total for all costs incurred by cost category or budget line item. Each claim shall also include a certification from the Project Coordinator that all amounts so claimed for reimbursement are correct, due and not claimed previously and that all work for which such reimbursement is being claimed was performed in accordance with the terms of this **AGREEMENT** or any specific contract applicable thereto approved by the **DEPARTMENT** under the terms of this **AGREEMENT**.

2. In the event that less than One Thousand Dollars {\$1,000.00} in such reimbursable costs are incurred in any one month period or regularly scheduled billing period of at least one month duration, the **CITY** shall defer any such claim therefore until the next month or regularly scheduled billing period in which at least One Thousand Dollars {\$1,000.00} in such reimbursable costs have been incurred or until the last or final claim is submitted for reimbursement. Payment of any claim may be subject to a final inspection of the **PROJECT** by the **DEPARTMENT** to determine the acceptability thereof as hereinbefore provided under **ARTICLE II**, Paragraph L.

3. The **DEPARTMENT** shall deduct all of the **CITY**'s share of such costs as hereinbefore described under Paragraph B of this **ARTICLE** prior to making any reimbursement. The **CITY** shall show such share on all bills so submitted.

4. In the event that the **CITY** withdraws from the **PROJECT**, suspends or delays the work on the **PROJECT** or takes some other action, including any acts of commission or omission, without concurrence of the **DEPARTMENT** which results in the loss of Federal participation in any of the reimbursable costs as provided herein, the **CITY** shall be responsible for all the Federal share of such costs and, if necessary, shall refund to the **DEPARTMENT** all of the Federal share of any reimbursements received which subsequently become ineligible for Federal participation. The **DEPARTMENT** shall have the additional remedy of withholding any funds that may become due to the **CITY** on account of this **PROJECT**.

ARTICLE IV. RECORD RETENTION, ACCESS REQUIREMENTS & AUDIT

A. The **CITY** shall maintain all **PROJECT** records for at least a period of three {3} years from the date of the **DEPARTMENT**'s acceptance of the **CITY**'s last or final submission of claim for reimbursement for **PROJECT** costs in accordance with the provisions of 49 CFR 18.42(b), except as otherwise provided below:

1. In the event that any litigation, claim, negotiation, audit or other action involving such records has begun prior to the expiration of such period, then all records shall be retained until all action and resolution of all issues arising there from are complete if such action or resolution extends beyond the three year period hereinbefore described.

2. The **CITY** shall assure that, in accordance with the provisions of 49 CFR 18.42(b), the **DEPARTMENT**, the Federal Highway Administration, and, if necessary, the Comptroller General of the United States, or any of their authorized representatives, shall have full access at any reasonable times to all records of the **PROJECT** for all purposes necessary to make audits, examinations, excerpts or transcripts.

B. The **CITY** shall assure that all applicable audit requirements are met in accordance with the provisions of OMB Circular A-133.

ARTICLE V. GENERAL PROVISIONS

A. The **CITY**, its employees, agents, representatives or consultants shall, in the performance of the work under this AGREEMENT, act in an independent capacity from the **DEPARTMENT**, and not as officers, employees or agents thereof.

B. Any amount paid out by the **DEPARTMENT** arising out of or from any errors, omissions or failures on the part of the **CITY** to meet professional standards of construction engineering and inspection shall be recovered from the **CITY** by reductions in any reimbursements due said **CITY** under the terms of this AGREEMENT or by any other legal means. The **DEPARTMENT** shall promptly notify the **CITY** if any potential claim arises under the provisions of this ARTICLE. The **CITY** shall be afforded full opportunity for a defense against any such claim. If it is subsequently determined that any such reduction in any reimbursement due the **CITY** by the **DEPARTMENT** was either arbitrary, capricious or fraudulent, then any amount so reduced shall be promptly paid.

C. The **CITY** shall indemnify and hold harmless the **DEPARTMENT** and its officers, agents and employees from any and all claims, suits or liabilities of every kind or nature arising out of or from any negligent, intentional, malicious or criminal act, error or omission by the **CITY** or any of its consultants occurring as a result of any work undertaken by the **CITY** pursuant to this AGREEMENT. This provision shall survive any termination or expiration of part or all of this AGREEMENT as hereinafter provided under ARTICLE VI, Paragraph C. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the **CITY** or the **DEPARTMENT**, its or their officers, agents or employees, under the Maine Tort Claims Act pursuant to the provisions of Title 14 of the Maine Revised Statutes Annotated {M.R.S.A.}, Section 8101 et seq. or any other privileges or immunities as may be provided by law.

D. The parties hereto agree that, where applicable, any information pertaining to right-of-way matters and all information pertaining to any detailed cost estimates shall be kept confidential pursuant to the provisions of 23 M.R.S.A., §63.

E. The **CITY** agrees to comply with all applicable equal employment opportunity requirements as follows:

1. During the performance of any work undertaken pursuant to this AGREEMENT, the **CITY** shall not discriminate against any employee or applicant for employment relating specifically to any 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 all such employees are treated without regard to 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 necessarily 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, or cause to be posted, in a prominent manner in conspicuous places readily available to all employees and applicants for such employment hereunder, notices setting forth the provisions of this paragraph.

2. In all solicitations or advertising for employees placed by or on behalf of the **CITY** relating specifically to any work undertaken pursuant to this AGREEMENT, the **CITY** shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age or physical handicap.

3. The **CITY** shall send to each labor union or representative of any of its employees covered by a collective bargaining agreement or any other contract or understanding under which any labor, work or services are to be furnished towards the **PROJECT** under terms of this AGREEMENT, a notice advising all such labor unions or representatives of employees of the **CITY**'s commitment under this ARTICLE and shall post copies of such notice prominently in conspicuous places readily available to all such employees and applicants for employment.

4. The **CITY** shall cause all of the foregoing equal employment opportunity provisions under this ARTICLE to be included in any contract for services or work undertaken pursuant to this AGREEMENT in such a manner that such provisions shall be binding upon each consultant except that the foregoing provisions shall not apply to any contract for the purchase of or the supply of standard commercial supplies or raw materials. To the maximum extent feasible, the **CITY** or any of its consultants shall list all suitable employment openings with the Maine Job Service. This provision shall not apply to employment openings which the **CITY** or any of its consultants propose to fill from within their own organization. The listing of such openings with the Maine Job Service shall involve only the normal obligations which pertain thereto.

F. The **CITY** shall require any and all consultants performing any of the services or work undertaken pursuant to this AGREEMENT to be insured in accordance with the provisions set forth under Section 110.3 of the **DEPARTMENT'S** Standard Specifications, December 2002 (DIVISION 100 – GENERAL CONDITIONS).

G. All plans, reports, notes, papers or other tangible work produced by or on behalf of the **CITY** under the terms of this AGREEMENT shall be the property of the **DEPARTMENT** and shall be turned over to the **DEPARTMENT** upon request following completion or termination of the **PROJECT**. The **CITY** shall be allowed an interest therein commensurate with its share of the **PROJECT** costs.

H. The **CITY** shall not sublet, sell, transfer, assign or otherwise dispose of this AGREEMENT or any portion thereof or any right, title or interest therein without the express written consent of the **DEPARTMENT**. No contract, agreement or transfer of this AGREEMENT shall in any case release or relieve the **CITY** from any liability under this AGREEMENT.

I. This AGREEMENT contains the entire agreement between the parties hereto relative to all matters of the **PROJECT** and neither party shall be bound by any statement, correspondence, agreement or representation made previous hereto which is not expressly contained herein.

J. The **DEPARTMENT** may postpone, suspend, abandon or otherwise terminate this AGREEMENT upon written notice to the **CITY** and in no event shall any such action be deemed a breach of contract. In the event that the reason for termination is other than for failure by the **CITY**, the **DEPARTMENT** shall give the **CITY** a written thirty {30} day notice of termination. Postponement, suspension, abandonment or termination may be taken for any reason by the **DEPARTMENT** or specifically as the result of any failure by the **CITY** or any consultant there under to perform any of the services required under this AGREEMENT to the satisfaction of the **DEPARTMENT**. Upon receipt of written notification from the **DEPARTMENT** that this AGREEMENT is to be postponed, suspended, abandoned or terminated for any of the foregoing reasons, the **CITY** or any consultant there under shall immediately cease all work or services subject to such termination, except any work required to protect the public health and safety, and turn over to the **DEPARTMENT** within thirty {30} days following the effective date of such termination, all **PROJECT** records and documentation pursuant to this AGREEMENT. Upon receipt of such records and documentation, the **DEPARTMENT** shall reimburse or arrange a settlement with the **CITY** in one of the following manners:

1. If the postponement, suspension, abandonment or termination is for any reason other than that set forth under subparagraph 2., below, the **CITY** shall be reimbursed for all work or services accomplished up until the effective date of such termination and pursuant to hereinbefore ARTICLE III, Paragraph A.

2. If the postponement, suspension, abandonment or termination is the result of any failure by the **CITY** or any consultant there under to correct any unsatisfactory performance after receiving fifteen {15} days written notice from the **DEPARTMENT** setting forth the basis of such dissatisfaction, the **CITY**'s reimbursement shall be limited to payment for acceptable work or service accomplished until the effective date of such termination and pursuant to hereinbefore ARTICLE III, Paragraph A.

K. The **DEPARTMENT** may terminate this AGREEMENT and withdraw Federal and State Program funds if, after eighteen (18) months from the execution of this AGREEMENT, the **CITY** has not demonstrated substantial progress in the development of the **PROJECT**. Such

termination shall not prohibit the **CITY** from resubmitting the **PROJECT** for future funding consideration.

ARTICLE VI. TERMS OF AGREEMENT

A. All of the provisions set forth under ARTICLES II and III, with the exception of ARTICLE II, Paragraphs I.5 and I.6, shall expire upon satisfactory completion of the terms set forth herein or three {3} years from the date hereof, whichever occurs first, unless otherwise terminated sooner or extended later in writing as hereinbefore provided under ARTICLE II, Paragraph N.2.

B. All of the provisions set forth under ARTICLES IV and V, except ARTICLE V, Paragraphs C and D, shall expire upon satisfactory completion of the terms set forth under ARTICLE IV, unless terminated sooner or extended later in writing as hereinbefore provided under ARTICLE II, Paragraph N.2.

C. The indemnification provision set forth under ARTICLE V, Paragraph C, shall remain in full force and effect indefinitely or until specifically terminated, modified or amended in writing by the parties hereto or negated by operation of law.

ARTICLE VII. APPROVAL

This AGREEMENT has been approved and signed in duplicate originals by the parties below and becomes effective on the day and date first above written.

CITY OF PORTLAND

by: _____
Joseph E. Gray, City Manager

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

by: _____
Kenneth L. Sweeney, Director Bureau of Project Development

Portland - LOCAL PROJECT AGREEMENT
Auburn St. - PIN (11586.00)
LOCAL PROJECT AGREEMENT
between the
CITY of PORTLAND
and the
State of Maine, Department of Transportation
Federal Project Number STP-1158(600)X
State PIN (11586.00)

This AGREEMENT is made this ____ day of _____, 2006, by and between the Department of Transportation, an agency of the State of Maine, having its principal office in Augusta, County of Kennebec, State of Maine {hereinafter called the **DEPARTMENT**}, and the CITY of PORTLAND, a municipal corporation and body politic, having its principal office in the CITY of PORTLAND, County of Cumberland, State of Maine {hereinafter called the **CITY**}.

W I T N E S S E T H

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WHEREAS, this AGREEMENT sets out the terms and conditions of the **DEPARTMENT**'s Federal & State funding to the **CITY**;

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1. Such approval shall be contingent upon the **DEPARTMENT** receiving authorization from the Federal Highway Administration {hereinafter called the **FHWA**} for Federal participation in the **PROJECT** costs. The **DEPARTMENT** shall not unreasonably withhold such approval.

2. All costs incurred by the CITY prior to receiving such approval from the DEPARTMENT shall be ineligible for Federal participation and, therefore, not reimbursable by the DEPARTMENT under the provisions of ARTICLE III. Any such ineligible costs may not be credited to the CITY's matching share responsibilities for the non-Federal portion of PROJECT costs.

C. The **DEPARTMENT** shall develop and prepare all of the necessary design plans, specifications, estimates and contract documents for the **PROJECT**, in accordance with the **DEPARTMENT**'s standards and procedures for procuring construction contracts for Federal-aid projects.

D. The **CITY** may contract for engineering and design services, as necessary, to develop, design or construct the **PROJECT**, provided:

1. The selection and retention of any individual or firm to provide or furnish any engineering or design related services for the **PROJECT** shall be based upon qualifications in accordance with the **DEPARTMENT**'s consultant selection and retention procedures.

2. No contract for such services shall be awarded without the express written approval of the **DEPARTMENT** pursuant to the provisions set forth under Part 172 of Title 23 in the United States Code of Federal Regulations {CFR}, specifically those provisions set forth under Section 172.5(d).

a. The **CITY** shall specifically monitor all work performed under any such contract pursuant to the provisions of 23 CFR 172.13.

b. The **DEPARTMENT** may accept or reject any work performed or procured under any such contract pursuant to the provisions of 23 CFR 172.5(d).

E. The **CITY** shall develop and prepare all environmental studies and reports for the **PROJECT**. All such studies and reports shall be submitted to the **DEPARTMENT** for review.

F. The **DEPARTMENT** shall prepare and submit to the **FHWA**, for concurrence, all environmental documentation required for the **PROJECT** under the provisions of the “*National Environmental Policy Act*” (NEPA).

G. The **City** shall be responsible for all necessary utility coordination and shall certify to the **DEPARTMENT** that all utilities potentially affected by the proposed highway improvements have been notified and offered plans to the proposed improvements. Prior to the approval of final plans as hereinafter provided, the **CITY** shall certify to the **DEPARTMENT** that all necessary utility adjustments or relocation have been coordinated within the affected **PROJECT** limits as per the **DEPARTMENTS** "Utility Accommodation Policy".

H. The **CITY** shall obtain all approvals, permits and licenses required to construct the **PROJECT**.

I. The **CITY** shall provide for public participation in the development of the **PROJECT**.

a. The **CITY** agrees to make all necessary notifications, of the **PROJECT**, to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351.

b. The use of all public land under the ownership or control of the parties hereto shall be made available for all purposes necessary or incidental to the **PROJECT** without any cost to the **PROJECT**.

1. The **DEPARTMENT** shall retain all right, title and interest that it presently holds in and to any of the property used for the **PROJECT**.

2. Any municipal property that is used for the **PROJECT** shall be dedicated for public use, *in perpetuity*, by the **CITY**.

a. Such dedication shall include a suitable monumented boundary and an engineering description sufficient to locate and define such land with ties to a reproducible control line.

b. The **CITY** shall forward to the **DEPARTMENT** a copy of such dedication, with description, prior to being authorized to solicit bids for construction of the **PROJECT**.

3. The **CITY** shall acquire and furnish any additional right-of-way necessary to construct and maintain the **PROJECT**.

a. All such rights-of-way shall be acquired in accordance with the “*Uniform Relocation Assistance and Real Property Acquisition Act of 1970*” as amended by the United States

Congress in 1987 (the Uniform Act) pursuant to the provisions set forth under 49 CFR Part 24.

b. The **CITY** or its consultant shall follow the “*Real Estate Acquisition Guide for Local Public Agencies*” published by the **FHWA**.

c. All such rights-of-way shall be acquired prior to advertising for construction bids and shall be held *inviolata* from all encroachments. The **CITY** shall certify in writing to the **DEPARTMENT** that all such rights-of-way have been acquired prior to being allowed to solicit bids as herein provided in Paragraph J of this ARTICLE.

d. The **CITY** agrees to keep the right-of-way of the **PROJECT**, within the DOT Urban Compact, inviolate from all encroachments and agrees to remove, or cause to be removed, any private installation, advertising sign, device or fixture which may encroach thereon.

4. The **CITY** shall furnish to the **DEPARTMENT** a right-of-way map or similar plan prepared in accordance with the **DEPARTMENT**'s specifications detailing all right-of-way acquired for, donated to or dedicated to the **PROJECT**.

5. The **CITY** shall develop and implement a maintenance plan acceptable to the **DEPARTMENT** which assures an appropriate level of maintenance necessary to maintain the improvements constructed under the **PROJECT** in order to preserve the use and function thereof as intended by the **PROJECT** and this AGREEMENT.

a. The **CITY** agrees to prohibit the excavation of the highway within the DOT Urban Compact limits of the **PROJECT** for a period of at least five (5) years after completion of the **PROJECT**, except for any emergency which will fall under provision 23 M.R.S.A. § 3351-A.

b. The **CITY** agrees to maintain, within the DOT Urban Compact limits, all improvements and fixtures constructed, installed or furnished as a part of the **PROJECT** in such a manner as is necessary to preserve the use and function thereof as intended by the **PROJECT**.

c. The **CITY** agrees to, within the DOT Urban Compact limits, regulate all entrances to the highway within the limits of the **PROJECT** in accordance with the provisions of 23 M.R.S.A. § 704.

J. Upon written approval of the **DEPARTMENT**, the **CITY** shall solicit for competitive bids. The **CITY** shall award a contract to construct the **PROJECT** as follows:

1. Competitive bids shall be solicited to construct the **PROJECT** in accordance with the plans and specifications approved by the **DEPARTMENT**.

2. Such solicitation and all procedures pertaining to the procurement of such a contract shall be in accordance with the **DEPARTMENT**'s procurement policy and procedures for Federal-aid projects, unless otherwise approved in writing by the **DEPARTMENT**.

3. Both the **CITY** and the **DEPARTMENT** shall have the right to accept or reject any and all bids received as a result of such solicitation.

4. The **CITY** shall not award any such contract without the express written approval of the **DEPARTMENT**.

5. Any construction contract shall specify that the **PROJECT** be constructed in compliance with the latest edition of the **DEPARTMENT**'s "*Standard Specifications (December 2002)*" and other applicable special provisions.

6. Upon award, the **CITY** shall arrange for a preconstruction meeting to coordinate the construction of the **PROJECT** with the Project Manager, the Contractor, and any and all utilities and other parties directly involved in such construction.

K. The **CITY** shall administer any construction contract and provide all of the necessary supervision, inspection and documentation required to insure that the **PROJECT** is completed satisfactorily in accordance with the plans, specifications and provisions of such contract.

1. The **CITY**'s Project Coordinator or his/her qualified designee shall be in responsible charge of the **PROJECT**, at all times.

2. The **CITY** shall use procedures acceptable to the **DEPARTMENT** to document the quantity and quality of all work performed under this AGREEMENT in an accurate and consistent manner. The **CITY** shall submit construction progress reports to the department weekly. All documentation, including all source documents used as the basis of payment for such work, shall become part of and shall be kept with the **PROJECT** record and retained as hereinafter provided under ARTICLE IV, Paragraph A.

3. The **CITY** shall provide for all testing required for the **PROJECT**.

4. Traffic throughout all work areas of the **PROJECT** shall be controlled in accordance with the provisions of Part VI of the "*Manual on Uniform Traffic Control Devices for Streets and Highways*" {MUTCD}, as published by the **FHWA**.

5. Any work involving force account procedures shall require the express written approval of the **DEPARTMENT** prior to so doing.

6. Upon completion of the **PROJECT**, the **CITY** shall provide compliance certification that the **PROJECT** was constructed, quantities were measured and documented, and materials were tested in accordance with the plans, specifications and provisions of the construction contract, and in accordance with the policies and procedures approved by the **DEPARTMENT**.

L. The **DEPARTMENT** may inspect construction activities and all documentation pertaining thereto at any time during the period of construction and may test any of the materials used therein to ensure compliance with the provisions and specifications of the construction contract. The **DEPARTMENT** may reject any work or materials not in such compliance. Upon

completion of the construction, the **DEPARTMENT** will inspect the **PROJECT** to determine the acceptability thereof prior to paying any final claim for reimbursement of **PROJECT** costs as hereinafter provided under ARTICLE III, Paragraph C.2.

M. Upon completion of construction, the **CITY** shall provide the **DEPARTMENT** with a set of reproducible *as-built* plans of the **PROJECT** on Mylar or equivalent archival quality material acceptable to the **DEPARTMENT** suitable for permanent filing.

N. The **CITY** shall make no changes in the scope or objectives of the **PROJECT**, or any of the costs thereof other than as hereinafter provided without the express written approval of the **DEPARTMENT**.

1. An approved change or extra work order shall be required to increase the cost of the **PROJECT** whenever expenditures are expected to exceed any approved single cost category or budget line item amount by more than ten percent {10% } or whenever the total of all participating **PROJECT** costs, as hereinafter defined under ARTICLE III, Paragraph A, is expected to exceed the sum of **Three Hundred Eighty Five Thousand and Five Hundred Dollars (\$385,500)** . In no event shall the total of all such participating **PROJECT** costs exceed the sum of **Three Hundred Eighty Five Thousand and Five Hundred Dollars (\$385,500)**, without the express written approval of the **DEPARTMENT**.

2. An approved change or extra work order shall also be required to revise, modify or change the scope or objectives of the **PROJECT** or any cost sharing or reimbursement provisions set forth herein, to extend or shorten the period of this AGREEMENT or to change any of the other terms set forth herein.

O. The **CITY** shall assure that all work undertaken by the **CITY** or any of its consultants pursuant to this AGREEMENT conforms to all applicable Federal, State and local laws. In part, Federal laws and regulations covering such work are set forth under Title 23 in the United States Code {USC} for applicable statutory law and 23 CFR for applicable administrative law. General administrative requirements relative to Federally funded activities are also contained under 49 CFR, Part 18 entitled, "*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*". Allowability for participating costs is set forth and described in the Executive Order of the President of the United States' Office of Management and Budget {OMB} Circular A-87 entitled, "*Cost Principles for State and Local Governments*".

ARTICLE III. COST SHARING & REIMBURSEMENT PROCEDURES

A. A portion of the cost to conduct the **PROJECT** shall be provided by the **DEPARTMENT** using State and Federal funds available to it through the **FHWA** at the approximate rate of Eighty five percent {85% } of all **PROJECT** costs deemed eligible for Federal participation in accordance with all applicable Federal laws and regulations as hereinbefore referenced under ARTICLE II, Paragraph O. For the purposes of this AGREEMENT, the State and Federal share of all eligible costs is approximately \$327,675 {85% of \$385,500} and the **CITY**'s share of all eligible costs is approximately \$57825 {15% of \$385,500}.

B. The **CITY** shall be responsible for all of the non-Federal/State or matching share of all participating **PROJECT** costs including all costs incurred by the **DEPARTMENT** for the **PROJECT**. The **CITY** shall also be responsible to enter into agreement with the town of Falmouth and collect any share Falmouth has in the project. The **CITY** shall also be responsible for all **PROJECT** costs deemed ineligible for Federal participation, including those as hereinbefore provided under ARTICLE II, Paragraph B.2 and as hereinafter provided under Paragraph C.4., unless otherwise agreed to in writing as hereinbefore provided under ARTICLE II, Paragraph N.2. The **CITY** shall also be responsible to collect the

C. The **DEPARTMENT** shall **reimburse** the **CITY** for all the Federal share of all participating **PROJECT** costs hereinbefore described under Paragraph A, as follows:

1. The **CITY** shall bill the **DEPARTMENT** no less than monthly for all claims for all allowable direct and actual **PROJECT** costs incurred under the provisions of this AGREEMENT. Costs are incurred whenever work is performed, goods and services are received or a cash disbursement is made. All claims for such costs shall be submitted on the **CITY**'s billhead or invoice and be itemized in at least the same detail as itemized in the approved **PROJECT** budget. Each claim so submitted shall include an accumulative total for all costs incurred by cost category or budget line item. Each claim shall also include a certification from the Project Coordinator that all amounts so claimed for reimbursement are correct, due and not claimed previously and that all work for which such reimbursement is being claimed was performed in accordance with the terms of this AGREEMENT or any specific contract applicable thereto approved by the **DEPARTMENT** under the terms of this AGREEMENT.
2. In the event that less than One Thousand Dollars {\$1,000.00} in such reimbursable costs are incurred in any one month period or regularly scheduled billing period of at least one month duration, the **CITY** shall defer any such claim therefore until the next month or regularly scheduled billing period in which at least One Thousand Dollars {\$1,000.00} in such reimbursable costs have been incurred or until the last or final claim is submitted for reimbursement. Payment of any claim may be subject to a final inspection of the **PROJECT** by the **DEPARTMENT** to determine the acceptability thereof as hereinbefore provided under ARTICLE II, Paragraph L.
3. The **DEPARTMENT** shall deduct all of the **CITY**'s share of such costs as hereinbefore described under Paragraph B of this ARTICLE prior to making any reimbursement. The **CITY** shall show such share on all bills so submitted.
4. In the event that the **CITY** withdraws from the **PROJECT**, suspends or delays the work on the **PROJECT** or takes some other action, including any acts of commission or omission, without concurrence of the **DEPARTMENT** which results in the loss of Federal participation in any of the reimbursable costs as provided herein, the **CITY** shall be responsible for all the Federal share of such costs and, if necessary, shall refund to the **DEPARTMENT** all of the Federal share of any reimbursements received which subsequently become ineligible for Federal participation. The **DEPARTMENT** shall have the additional remedy of withholding any funds that may become due to the **CITY** on account of this **PROJECT**.

ARTICLE IV. RECORD RETENTION, ACCESS REQUIREMENTS & AUDIT

A. The **CITY** shall maintain all **PROJECT** records for at least a period of three {3} years from the date of the **DEPARTMENT**'s acceptance of the **CITY**'s last or final submission of claim for reimbursement for **PROJECT** costs in accordance with the provisions of 49 CFR 18.42(b), except as otherwise provided below:

1. In the event that any litigation, claim, negotiation, audit or other action involving such records has begun prior to the expiration of such period, then all records shall be retained until all action and resolution of all issues arising there from are complete if such action or resolution extends beyond the three year period hereinbefore described.

2. The **CITY** shall assure that, in accordance with the provisions of 49 CFR 18.42(b), the **DEPARTMENT**, the Federal Highway Administration, and, if necessary, the Comptroller General of the United States, or any of their authorized representatives, shall have full access at any reasonable times to all records of the **PROJECT** for all purposes necessary to make audits, examinations, excerpts or transcripts.

B. The **CITY** shall assure that all applicable audit requirements are met in accordance with the provisions of OMB Circular A-133.

ARTICLE V. GENERAL PROVISIONS

A. The **CITY**, its employees, agents, representatives or consultants shall, in the performance of the work under this AGREEMENT, act in an independent capacity from the **DEPARTMENT**, and not as officers, employees or agents thereof.

B. Any amount paid out by the **DEPARTMENT** arising out of or from any errors, omissions or failures on the part of the **CITY** to meet professional standards of construction engineering and inspection shall be recovered from the **CITY** by reductions in any reimbursements due said **CITY** under the terms of this AGREEMENT or by any other legal means. The **DEPARTMENT** shall promptly notify the **CITY** if any potential claim arises under the provisions of this ARTICLE. The **CITY** shall be afforded full opportunity for a defense against any such claim. If it is subsequently determined that any such reduction in any reimbursement due the **CITY** by the **DEPARTMENT** was either arbitrary, capricious or fraudulent, then any amount so reduced shall be promptly paid.

C. The **CITY** shall indemnify and hold harmless the **DEPARTMENT** and its officers, agents and employees from any and all claims, suits or liabilities of every kind or nature arising out of or from any negligent, intentional, malicious or criminal act, error or omission by the **CITY** or any of its consultants occurring as a result of any work undertaken by the **CITY** pursuant to this AGREEMENT. This provision shall survive any termination or expiration of part or all of this AGREEMENT as hereinafter provided under ARTICLE VI, Paragraph C. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the **CITY** or the **DEPARTMENT**, its or their officers, agents or employees, under the Maine Tort Claims Act pursuant to the provisions of Title 14 of the Maine Revised Statutes Annotated {M.R.S.A.}, Section 8101 et seq. or any other privileges or immunities as may be provided by law.

D. The parties hereto agree that, where applicable, any information pertaining to right-of-way matters and all information pertaining to any detailed cost estimates shall be kept confidential pursuant to the provisions of 23 M.R.S.A., §63.

E. The **CITY** agrees to comply with all applicable equal employment opportunity requirements as follows:

1. During the performance of any work undertaken pursuant to this AGREEMENT, the **CITY** shall not discriminate against any employee or applicant for employment relating specifically to any 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 all such employees are treated without regard to 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 necessarily 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, or cause to be posted, in a prominent manner in conspicuous places readily available to all employees and applicants for such employment hereunder, notices setting forth the provisions of this paragraph.

2. In all solicitations or advertising for employees placed by or on behalf of the **CITY** relating specifically to any work undertaken pursuant to this AGREEMENT, the **CITY** shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age or physical handicap.

3. The **CITY** shall send to each labor union or representative of any of its employees covered by a collective bargaining agreement or any other contract or understanding under which any labor, work or services are to be furnished towards the **PROJECT** under terms of this AGREEMENT, a notice advising all such labor unions or representatives of employees of the **CITY**'s commitment under this ARTICLE and shall post copies of such notice prominently in conspicuous places readily available to all such employees and applicants for employment.

4. The **CITY** shall cause all of the foregoing equal employment opportunity provisions under this ARTICLE to be included in any contract for services or work undertaken pursuant to this AGREEMENT in such a manner that such provisions shall be binding upon each consultant except that the foregoing provisions shall not apply to any contract for the purchase of or the supply of standard commercial supplies or raw materials. To the maximum extent feasible, the **CITY** or any of its consultants shall list all suitable employment openings with the Maine Job Service. This provision shall not apply to employment openings which the **CITY** or any of its consultants propose to fill from within their own organization. The listing of such openings with the Maine Job Service shall involve only the normal obligations which pertain thereto.

F. The **CITY** shall require any and all consultants performing any of the services or work undertaken pursuant to this AGREEMENT to be insured in accordance with the provisions set forth under Section 110.3 of the **DEPARTMENT'S** Standard Specifications, December 2002 (DIVISION 100 – GENERAL CONDITIONS).

G. All plans, reports, notes, papers or other tangible work produced by or on behalf of the **CITY** under the terms of this AGREEMENT shall be the property of the **DEPARTMENT** and shall be turned over to the **DEPARTMENT** upon request following completion or termination of the **PROJECT**. The **CITY** shall be allowed an interest therein commensurate with its share of the **PROJECT** costs.

H. The **CITY** shall not sublet, sell, transfer, assign or otherwise dispose of this AGREEMENT or any portion thereof or any right, title or interest therein without the express written consent of the **DEPARTMENT**. No contract, agreement or transfer of this AGREEMENT shall in any case release or relieve the **CITY** from any liability under this AGREEMENT.

I. This AGREEMENT contains the entire agreement between the parties hereto relative to all matters of the **PROJECT** and neither party shall be bound by any statement, correspondence, agreement or representation made previous hereto which is not expressly contained herein.

J. The **DEPARTMENT** may postpone, suspend, abandon or otherwise terminate this AGREEMENT upon written notice to the **CITY** and in no event shall any such action be deemed a breach of contract. In the event that the reason for termination is other than for failure by the **CITY**, the **DEPARTMENT** shall give the **CITY** a written thirty {30} day notice of termination. Postponement, suspension, abandonment or termination may be taken for any reason by the **DEPARTMENT** or specifically as the result of any failure by the **CITY** or any consultant there under to perform any of the services required under this AGREEMENT to the satisfaction of the **DEPARTMENT**. Upon receipt of written notification from the **DEPARTMENT** that this AGREEMENT is to be postponed, suspended, abandoned or terminated for any of the foregoing reasons, the **CITY** or any consultant there under shall immediately cease all work or services subject to such termination, except any work required to protect the public health and safety, and turn over to the **DEPARTMENT** within thirty {30} days following the effective date of such termination, all **PROJECT** records and documentation pursuant to this AGREEMENT. Upon receipt of such records and documentation, the **DEPARTMENT** shall reimburse or arrange a settlement with the **CITY** in one of the following manners:

1. If the postponement, suspension, abandonment or termination is for any reason other than that set forth under subparagraph 2., below, the **CITY** shall be reimbursed for all work or services accomplished up until the effective date of such termination and pursuant to hereinbefore ARTICLE III, Paragraph A.

2. If the postponement, suspension, abandonment or termination is the result of any failure by the **CITY** or any consultant there under to correct any unsatisfactory performance after receiving fifteen {15} days written notice from the **DEPARTMENT** setting forth the basis of such dissatisfaction, the **CITY**'s reimbursement shall be limited to payment for acceptable work or service accomplished until the effective date of such termination and pursuant to hereinbefore ARTICLE III, Paragraph A.

K. The **DEPARTMENT** may terminate this AGREEMENT and withdraw Federal and State Program funds if, after eighteen (18) months from the execution of this AGREEMENT, the **CITY** has not demonstrated substantial progress in the development of the **PROJECT**. Such

termination shall not prohibit the **CITY** from resubmitting the **PROJECT** for future funding consideration.

ARTICLE VI. TERMS OF AGREEMENT

A. All of the provisions set forth under ARTICLES II and III, with the exception of ARTICLE II, Paragraphs I.5 and I.6, shall expire upon satisfactory completion of the terms set forth herein or three {3} years from the date hereof, whichever occurs first, unless otherwise terminated sooner or extended later in writing as hereinbefore provided under ARTICLE II, Paragraph N.2.

B. All of the provisions set forth under ARTICLES IV and V, except ARTICLE V, Paragraphs C and D, shall expire upon satisfactory completion of the terms set forth under ARTICLE IV, unless terminated sooner or extended later in writing as hereinbefore provided under ARTICLE II, Paragraph N.2.

C. The indemnification provision set forth under ARTICLE V, Paragraph C, shall remain in full force and effect indefinitely or until specifically terminated, modified or amended in writing by the parties hereto or negated by operation of law.

ARTICLE VII. APPROVAL

This AGREEMENT has been approved and signed in duplicate originals by the parties below and becomes effective on the day and date first above written.

CITY OF PORTLAND

by: _____
Joseph E. Gray, City Manager

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

by: _____
Kenneth L. Sweeney, Director Bureau of Project Development