

Order 263-07/08

Given first reading on 5/19/08

Public Hearing & Passage: 6/2/08 9-0

EDWARD J. SUSLOVIC (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DANIEL S. SKOLNIK (3)

CHERYL A. LEEMAN (4)

## CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

### **ORDER AUTHORIZING CITY-STATE AGREEMENT WITH MAINE DEPARTMENT OF TRANSPORTATION RE: RECONSTRUCTION OF PORTION OF WARREN AVENUE**

**ORDERED**, that the City Manager is authorized to execute a City-State Agreement with the Maine Department of Transportation substantially in the form attached, for the reconstruction of a portion of Warren Avenue from Hicks Street to Applicator Sales; and

**BE IT FURTHER ORDERED**, that the City's local share of the eligible costs are hereby appropriated in part (\$476,000) from existing surplus CIP accounts as approved by the Finance Director; and

**BE IT FURTHER ORDERED**, that no construction contract shall be finally executed for such project until such time the additional local share of \$600,000 is appropriated.



# MUNICIPAL/STATE AGREEMENT

BETWEEN THE

**STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION**

AND THE

**CITY OF PORTLAND**

REGARDING

**PROPOSED IMPROVEMENTS TO WARREN AVENUE**

FEDERAL AID PROJECT NO. **STP-1054(400)X**  
STATE PROJECT IDENTIFICATION NUMBER (PIN) 10544.00

This AGREEMENT is entered into on this day of [REDACTED], 2007 by and between the STATE OF MAINE DEPARTMENT OF TRANSPORTATION (hereafter the **DEPARTMENT**) and the CITY OF PORTLAND, a municipal corporation located in the County of **CUMBERLAND** (hereafter the **MUNICIPALITY**) regarding the planning, development, design, right of way, construction, cost sharing and reimbursement for a project to make improvements to WARREN AVENUE, in PORTLAND, Maine, under Federal Aid Project No. STP-1054(400)X /State Project Identification Number (PIN) 10544.00, (hereafter **PROJECT**) as follows:

A. The **DEPARTMENT** agrees to procure and administer a contract to construct the **PROJECT** in accordance with the plans and specifications developed by the **DEPARTMENT**, to which reference is hereby made for a more particular description thereof. The **DEPARTMENT** also agrees to include work in said contract as requested by the **MUNICIPALITY** based upon plans, specifications and estimates furnished by the **MUNICIPALITY** in accordance with the provisions of Paragraph C below, or as developed by the **DEPARTMENT**, provided the **MUNICIPALITY** meets all of the conditions and stipulations set forth under Paragraph D below. This additional work is outlined as follows and described in **Appendix B**:

- |                                     |                                 |
|-------------------------------------|---------------------------------|
| 1. <u>New Sidewalk Construction</u> | <u>Municipal cost share 100</u> |
| <u>%</u>                            |                                 |
| 2. <u>Additional drainage</u>       | <u>Municipal cost share</u>     |
| <u>100%</u>                         |                                 |

- B. The **DEPARTMENT** agrees to provide (85%) of the funding obligated by Portland Area Comprehensive Transportation Committee (PACTS) necessary for the **PROJECT** and be responsible for all costs thereof, subject to cost sharing, including the amount that exceeds the PACTS obligation to the **PROJECT** by the **MUNICIPALITY** as specified below in *Paragraphs D and E*. The **DEPARTMENT** reserves the right to terminate the **PROJECT** for any reason prior to the award of a contract to construct the **PROJECT**. The **DEPARTMENT** also reserves the right to terminate all provisions pertaining to work requested by the **MUNICIPALITY** as hereinbefore described at any time prior to the award of a contract to construct the **PROJECT** because of any failure by the **MUNICIPALITY** to meet any of the conditions and stipulations set forth under Paragraphs C and D below.
- C. The **MUNICIPALITY**, at its election, may request that changes be added to the **PROJECT** during the period of construction, provided that the **MUNICIPALITY** agrees in writing to pay any additional cost thereof based upon the actual cost of construction **PLUS** an amount not to exceed ten (10%) percent of the actual construction costs to cover all necessary engineering, inspection, testing, and administrative costs associated with the change or additional work requested by the **MUNICIPALITY** unless specified otherwise. The **MUNICIPALITY** agrees to furnish all plans, specifications and estimates necessary to include requested work as hereinbefore described above as additional work under the **PROJECT** as follows:
1. All plans and specifications shall conform to the standards used by the **DEPARTMENT** as set forth in the latest version of its *"Highway Design Guide" and "Standard Details for Highways and Bridges"* and comply with the **DEPARTMENT's** utility accommodation policy as set forth in its *"Policy On Above Ground Utility Locations"*.
  2. All plans shall be size "D" drawings measuring 22 inches by 36 inches reproducible in black and white print.
  3. All specifications shall be printed on **8-1/2** inch wide by 11 inch long paper suitable for binding in the **DEPARTMENT's** proposal book.
  4. The **MUNICIPALITY** shall provide a detailed engineer's estimate of the cost of such additional work figured in a manner acceptable to the **DEPARTMENT** and allow for bidding as hereinafter provided. The **MUNICIPALITY** agrees that all cost information developed for such bidding shall be kept confidential pursuant to the provisions of Title 23 of the Maine Revised Statutes Annotated (M.R.S.A.) Section 63.
  5. The **MUNICIPALITY** shall obtain all permits, licenses, releases and approvals necessary or incidental to the additional work described in Paragraph A above.
  6. The submission of all plans, specifications and estimates; as well as all permits, licenses, releases and approvals as hereinbefore prescribed shall be done in such a timely manner as not to unreasonably delay the **DEPARTMENT's** schedule for soliciting bids to construct the **PROJECT**.
- D. Upon acceptance of any plans, specifications and estimates submitted by the **MUNICIPALITY** as hereinbefore prescribed, the **DEPARTMENT** shall solicit for competitive bids for the **PROJECT** including the additional work so described in said plans, specifications and estimates, plans, specifications and estimates. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the **PROJECT** and fulfillment of all terms set forth above, the **DEPARTMENT** shall award a contract to construct the **PROJECT**. All decisions pertaining to the administration of such a contract and all payments there under shall be the sole discretion of the **DEPARTMENT**. In the event that such changes or work are approved for federal participation in the cost thereof, such additional cost may be reduced to the non-federal share of such cost.

1. If upon the opening of bids received as a result of such solicitation, the bid price for such additional work as bid by the lowest acceptable responsive, responsible bidder for the **PROJECT** exceeds the detailed estimate submitted by the **MUNICIPALITY** as hereinbefore provided by any more than ten (10%) percent, the **MUNICIPALITY** shall have the right to refuse to accept such bid price by notifying the **DEPARTMENT** of such refusal within five (5) business days of the opening of such bids. The **MUNICIPALITY** may waive such right by doing so in writing anytime prior to or during such period. Otherwise, all decisions pertaining to the acceptance bids and the award of any construction contract shall be the sole discretion of the **DEPARTMENT**.
  2. If upon the opening of such bids, the bid price for such additional work as bid by the lowest acceptable responsive, responsible bidder for the **PROJECT** is acceptable to the **MUNICIPALITY**, the **MUNICIPALITY** shall pay to the **DEPARTMENT** within ten (10) business days of such opening an amount equal to the **MUNICIPALITY**'s share of the estimated cost of such additional work based upon the prices as bid by such bidder. Following payment of such amount, the **DEPARTMENT** agrees to award a contract to construct the **PROJECT** which includes such additional work as hereinafter provided.
  3. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the **PROJECT** and fulfillment of all terms set forth above, the **DEPARTMENT** shall award a contract to construct the **PROJECT** which includes such additional work as hereinbefore described. All decisions pertaining to the administration of such a contract and all payments thereunder shall be the sole discretion of the **DEPARTMENT**.
  4. The parties agree that any additional payment or any refund necessary to adjust the amount of any payment or deposit made pursuant to the provisions of subparagraph 2 above because of any differences between estimated and actual quantities which effects the actual cost of such additional work shall be due and payable upon determination of final quantities or upon any determination by the **DEPARTMENT** that the actual cost of such additional work is expected to differ measurably from the amount of such payment due to changes in quantities placed or work performed during the period of construction.
- E. The **MUNICIPALITY** also agrees to pay to the **DEPARTMENT** upon receipt of at least three invoices as described below its local share towards the cost of the **PROJECT**. Such payments shall be lump sum including **FIFTEEN 15%** percent of the **total** estimated cost of the **PROJECT** as estimated in detail upon such award using updated cost information, including the bid prices contained in such a contract, and 100% of the actual cost of approved additional work described in paragraph A above.
1. MUNICIPAL shares will be invoiced to the MUNICIPALITY in THREE invoices; A) one invoice will be issued immediately following the execution of this agreement. This installment will include actual expenditures on Preliminary Engineering and Right of Way Costs as described in **Appendix A**. B) An invoice will be issued at the time of winter suspension. This installment will include actual expenditures of the Construction and Construction Engineering to this date. C) A final bill will be created at the closeout of the project, after all quantities are verified, all Right of Way settlements completed, and any required adjustments have been made. The cost of the work for which the **DEPARTMENT** will bill the **MUNICIPALITY** shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of **PROJECT** development cost to the point of termination as stipulated above.
  2. The **MUNICIPALITY** shall review all invoices and submit payment to the **DEPARTMENT** within 30 days.

3. In the event of **PROJECT** termination, all provisions of this AGREEMENT shall become null and void except for those set forth under *Paragraphs B and E* as aforesaid.
- F. The **MUNICIPALITY** agrees to allow the **DEPARTMENT's** contractor to control all traffic through the work areas on the **PROJECT** as necessary to permit construction thereof in the manner specified in a Traffic Control Plan approved by the **DEPARTMENT**.
- G. The **MUNICIPALITY** agrees to alter, move, relocate or remove any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, which might become necessary to permit construction of the **PROJECT**, which has not otherwise been provided for during the development of the **PROJECT**, without any cost to the **PROJECT** whatsoever. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the **PROJECT**.
- H. The **MUNICIPALITY** agrees to assure proper adjustment, relocation, or repair of any portion of a service that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the **PROJECT**. The **MUNICIPALITY** agrees to hold the **DEPARTMENT** harmless from any claims for damages occurring as a result thereof.
- I. The **MUNICIPALITY** agrees to 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**, except for any emergency, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any city government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the **PROJECT** shall be regulated and controlled in the manner specified by the **DEPARTMENT** in its *"Rules, Regulations and Policies for Highway Openings"*, to which reference is hereby made.
- J. The **MUNICIPALITY** agrees to maintain 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**.
- K. 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, any private installation, advertising sign, device or fixture which may encroach thereon.
- L. 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
- M. The **MUNICIPALITY** agrees to limit all on-street parking along **WARREN AVENUE** to the parking spaces as designed and constructed under the **PROJECT** and prohibit all other such parking along the remainder of said street within the limits of the **PROJECT**.
- N. The **DEPARTMENT** may postpone, suspend, abandon or otherwise terminate this AGREEMENT upon thirty (30) days written notice to the **MUNICIPALITY** and in no event shall any such action be

deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by the **DEPARTMENT** or specifically as the result of any failure by the **MUNICIPALITY** to perform any of the services required under this AGREEMENT to the satisfaction of the **DEPARTMENT**.

- O. The **MUNICIPALITY** certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the **MUNICIPALITY** is unable to certify to this statement, it shall attach an explanation to this Agreement.
  
- P. The **MUNICIPALITY** and the **DEPARTMENT** agree to function within all applicable laws, statutes, regulations, MUTCD, 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.
  
- Q. All provisions of this AGREEMENT, *except those provided above in Paragraphs J-N*, shall expire at **PROJECT** final voucher, or upon final payment by the **MUNICIPALITY** of any **PROJECT** costs as hereinbefore provided, whichever occurs later.

IN **WITNESS WHEREOF**, the parties hereto have executed this AGREEMENT in duplicate effective on the day and date first above written.

**MUNICIPALITY**

By: \_\_\_\_\_

Joseph E. Gray, City Manager

**STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Kenneth L. Sweeney, Director  
Bureau of Project Development

**APPENDIX A**

The **MUNICIPALITY** agrees to pay to the **DEPARTMENT** a local share towards the cost of the **PROJECT**. Such local share will be paid in 3 installments. Each payment will coincide with a key milestone committing funds towards the completion of the **PROJECT** and will be based on actual total project costs. Each payment will include **FIFTEEN PERCENT (15%)** of the actual total cost of the project as described in detail upon such milestone using updated cost information, including the awarded bid prices contained in the **PROJECT** contract. In addition, Installments 2 and 3 will include 100% of the actual cost of approved additional work.

**INSTALLMENT # 1:**

Payment for installment # 1 will be invoiced to the **MUNICIPALITY** immediately following the execution of this agreement. This Installment will include the **Municipality's** share of the Preliminary Engineering and Right of Way costs as described below.

<u>FUNCTION</u> <u>Share</u>	<u>TOTAL EXPENDED (4/28/08)</u>	<u>MUNICIPAL 15%</u>
Preliminary Engineering (PS&E)	\$ 462,287.75	\$ 69,343.16
Right of Way (PS&E)	\$ 110,015.77	\$ 16,502.37
<b>INSTALLMENT # 1 TOTAL:</b>		<b>\$ 85,845.53</b>

**INSTALLMENT # 2 & 3:**

Payment for installment # 2 will be invoiced to the **MUNICIPALITY** immediately following winter suspension of the construction of the **PROJECT**. This Installment will include the **Municipality's** share of the Construction and Construction Engineering costs as of that date.

Payment for installment # 3 will be invoiced at the closeout of the project, after all quantities are verified, all Right of Way settlements completed, and any required adjustments have been made. The detailed breakdown below is the Engineer's estimate at the time of advertisement. Installment # 2 & 3 will be based on actual awarded contract amounts, and total project expenditures at the time of invoicing.

<u>FUNCTION</u> <u>MUNICIPAL 15% Share</u>	<u>TOTAL ESTIMATED</u>	
Construction (Engineer's Est at PS&E)	\$ 2,225,347.37*	
PACTS Obligation remaining (includes Const & CE ONLY)	\$ 1,802,396.40	
	\$270,359.46	
City of Portland obligation beyond PACTS MUNICIPALITY)	\$ 422,950.90	\$ 422,950.90 (100%

Requested work – Sidewalk MUNICIPALITY)	\$ 47,811.90	\$ 47,811.90 (100%
Requested work – Drainage Pipe MUNICIPALITY)	\$ 73,345.00	\$ 73,345.00 (100 %

**INSTALLMENT # 2 & 3 ESTIMATED TOTAL:                   \$**  
**814,467.26**

**APPENDIX B**

**Breakdown of requested work**

New Sidewalk Construction:

Item # 403.209 9.5mm HMA 106.2 mg (say 110mg)  $110 * 155 = \$ 17,050.00$

Item # 608.26 Truncated domes  $6m^2 * 551.20 = \$ 3307.20$

Item # 608.45 Construct Sidewalk  $885 m^2 * \$27.02 = 23,912.70$

Item # 659.10 Mobilization (pro-rated @ 8%) \$ 3542.00

**TOTAL = \$47,811.90**

Additional Drainage:

Item # 304.10 Aggregate Subbase Course – Gravel  $110 m^3 * \$29.00 = \$ 3190.00$

Item # 403.209 9.5mm HMA  $45mg * \$155.00 = \$6975.00$

Item # 603.255 1500mm RCP Class III pipe  $47.5m * \$1118.00 = \$53,105.00$

Item # 610.08 Rip Rap  $41 m^3 * \$ 75.00 = \$3075.00$

Item # 659.10 Mobilization (prorated @ 8%) \$7000.00

**TOTAL = \$73,345.00**