

Order 151-20/21

Passage: 8-0 (Fournier absent) on 1/4/2021

Effective 1/14/2021

KATE SNYDER (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (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)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE AGREEMENT BETWEEN THE MAINE  
DEPARTMENT OF TRANSPORTATION AND THE CITY OF PORTLAND  
RE: RAND ROAD**

**ORDERED**, that the Municipal/State Agreement between the Maine Department of Transportation and the City of Portland for manhole cover and pedestrian improvements on Rand Road, with Work Identification Number 23709, is hereby approved in substantially the form attached hereto: and

**BE IT FURTHER ORDERED**, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

<i>MaineDOT Use Only</i>	
TEDOCS #:	_____
CT#:	_____
CSN#:	_____
Program:	_____

**MAINE DEPARTMENT OF TRANSPORTATION  
UTILITY RECEIVABLE AGREEMENT**

<i>(MaineDOT Use Only)</i>	
Project Location: <u>Portland &amp; Westbrook</u>	Estimated Agreement Amount: \$ <u>\$15,750.00</u>
State WIN #: <u>23709.00</u>	Vendor Customer #: _____
Federal Aid Project #: <u>2370900</u>	MaineDOT Signed Date: _____
	Forecasted Agreement End Date: <u>12/31/2021</u>

**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 the **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 2370900; WIN: 23709.00 (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”);
  
3. The Affected Facilities consist of Sewer System Manholes;
  
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 ( 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:

Name: David Lycette  
Address: Maine DOT  
16 State House Station  
  
E-mail: [david.lycette@maine.gov](mailto:david.lycette@maine.gov)  
Telephone: (207) 592-1378

For the Utility:

Name: Lauren Andersen, P.E.  
Address: City of Portland  
212 Canco Road  
Portland, ME 04103  
  
E-mail: [landersen@portlandmaine.gov](mailto:landersen@portlandmaine.gov)  
Telephone: 207-874-8844

**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: Jon P. Jennings

Title City Manager  
Duly Authorized

DATE: \_\_\_\_\_

**STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION**

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

Print Name: \_\_\_\_\_

Title  
Duly Authorized

DATE: \_\_\_\_\_

**APPENDIX A**  
**PROJECT SCOPE**

**MAINE DEPARTMENT OF TRANSPORTATION**  
**UTILITY RECEIVABLE AGREEMENT**

**CITY OF PORTLAND – DEPARTMENT OF PUBLIC SERVICES**  
(Route 25, 25B and Larrabee Road)

FEDERAL AID PROJECT NO. 2370900  
STATE PROJECT IDENTIFICATION NUMBER (WIN) 23709.00

**Project Scope:** Lower all sewer manholes on the project if needed for milling and raise all sewer manholes on the project after shim to match new final surface paving.

**ESTIMATE OF UTILITY WORK:**

<b>Item #</b>	<b>Pay Item</b>	<b>Estimated Quantity /Unit</b>	<b>Unit Price</b>	<b>Utility Cost</b>
812.162	Adjusting Sewer Manhole to Grade	9 Each	\$1,750.00	\$15,750.00
<b>Total Cost:</b>				\$15,750.00

**ESTIMATED PAYMENT SCHEDULE:**

<b>Utility</b>	<b>Payment Amount</b>	<b>Estimated Invoice Date</b>
City of Portland	\$15,750.00	After utility work is complete. On or after 7/1/2021.