

Order 222-20/21

Passage: 9-0 on April 26, 2021

Effective May 6, 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: VERANDA STREET**

ORDERED, that the Municipal/State Agreement between the Maine Department of Transportation and the City of Portland for utility duct improvements on Veranda Street, with Work Identification Number 21745, 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.

TEDOCS #: _____

CT#: _____

CSN#: _____

Program: _____

MAINE DEPARTMENT OF TRANSPORTATION UTILITY RECEIVABLE AGREEMENT

(MaineDOT Use Only)

Project Location: Veranda Street

Estimated Agreement Amount: \$ 16,111.11

State WIN #: 21745.00

Vendor Customer #: 17A21407

Federal Aid Project #: NHPP-2174(500)

MaineDOT Signed Date: _____

Forecasted Agreement End Date: May 31, 2022

THIS AGREEMENT, entered into the last date signed herein at the end of this agreement, between the **Maine Department Of Transportation** (hereafter the “Department”) and **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 NHPP-2174(500); WIN: 21745.00 (the “Project”) for bridge improvements in the City of Portland of 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 Utility has expressed an interest in installing new utility facilities within the limits of the public highway right-of-way and the impact limits of the Project (the “Affected Facilities”).

3. The Affected Facilities consist of Installation of 1 conduit in concrete duct bank.
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 (5) 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: Gerald Libby, Jr.

Address: 16 State House Station
Augusta, ME 04333

E-mail: gerald.g.libbyjr@maine.gov

Telephone: (207) 592-3845

For the Utility:

Name: _____

Address: _____

E-mail: _____

Telephone: _____

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.

UTILITY/DISTRICT/MUNICIPALITY

By: _____

Print Name: _____

Title

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

THE CITY OF PORTLAND
Veranda Street - Portland

FEDERAL AID PROJECT NO. NHPP-2174(500)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 21745.00

Project Scope:

This work shall consist of all work shown on the Plans, as referenced in Special Provision 104 and described in this special provision. This work shall consist of furnishing and installing all materials and labor for the installation of one concrete duct bank consisting of six (6) 4-inch schedule 40 PVC conduit and three (3) 6-inch schedule 40 PVC conduit, all trenching and backfilling, sand bed, traffic related electrical vaults (splice boxes) with round cast iron frames and covers, crushed stone bases, bricks, mortar, covers and gradual sweeps (36-inch minimum if necessary), pull rope, tracer wire, warning tape, and all associated hardware and incidentals related to these items necessary to complete the work. See vault and trench details in the plans. The utility owners' name (CMP, Consolidated, Spectrum, Firstlight, Mainecom and the City of Portland) shall be clearly labeled and visible at each terminus in the duct bank. The City of Portland will be responsible for 1/9th of the cost of the work for the duct bank and will own one (1) 4-inch schedule 40 PVC conduit within the duct bank.

ESTIMATE FROM CONTRACT DOCUMENTS:

Pay Item	Estimated Cost from Contract Bid Tabs
910.301 – Special Work – Utility Conduit Duct Bank	\$145,000.00 Lump Sum

\$145,000.00 ÷ 9 Conduits (Total) = \$16, 111.11

ESTIMATE OF UTILITY WORK:

Item #	Pay Item	Estimated Quantity /Unit	Unit Price	Utility Cost
910.301	Special Work - Utility Conduit Concrete Duct Bank	1	LS	
	Estimated cost for One (1) Conduit	1	\$16,111.11	\$16,111.11
		Total Cost:		\$16,111.11

ESTIMATED PAYMENT SCHEDULE:

Utility	Payment Amount	Estimated Invoice Date
City of Portland	\$16,111.11	May 31, 2022