STATE OF MAINE
COUNTY OF YORK
CITY OF SACO

The following are minutes of the January 22, 2008 Council Meeting.

I. CALL TO ORDER – On Tuesday, January 22, 2008 at 7:00 p.m. a Council Meeting was held in the City Hall Auditorium.

II. ROLL CALL OF MEMBERS – Mayor Michaud conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: Margaret Mills, Ronald Morton, Sandra Bastille, Arthur Tardif, Eric Cote and Marston Lovell. Councilor Leslie Smith, Jr. was excused this evening.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES: December 17, 2007

Minutes were approved as printed.

A. GENERAL:
   I. Advancing Government Accountability 2008 Distinguished Local Government Leadership Award Mayor Roland L. Michaud to Lisa Parker, Finance Director

CITY ADMINISTRATION OFFICE

Memo

Date: January 17, 2008
From: Richard R. Michaud, City Administrator
To: Mayor Michaud and City Councilors
RE: Advancing Government Accountability 2008 Distinguished Local Government Leadership Award

Each year the Advancing Government Accountability (AGA) presents one crystal award to a government professional who exemplifies and promotes excellence in government, outstanding leadership, high ethical standards and innovative management procedures. The award recognizes the cumulative achievements of a state or local government professional who throughout his/her public career has served as a role model for others and has consistently exhibited the highest personal and professional standards.

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Congratulations to the City of Saco- Finance Director -Lisa Parker for receiving this award and recognition! As a community we are proud to employ such an outstanding professional!

II. Government Finance Officer’s Association Distinguished Budget Presentation Award to the City of Saco - 2008

CITY ADMINISTRATION OFFICE

Memo

Date: January 17, 2008
From: Richard R. Michaud, City Administrator
To: Mayor Michaud and City Councilors
RE: Distinguished Budget Presentation Award 2008

For the 6th year in a row, the Government Finance Officers Association of the United States and Canada presented a Distinguished Budget Presentation Award to the City of Saco, Maine for its annual budget for the fiscal year beginning July 1, 2007. This award is the highest form of recognition in governmental budgeting. Its attainment represents a significant achievement by our organization.

Additionally, for this quality work, Finance Director Lisa Parker has again received a “Certificate of Recognition for Budget Presentation”, for fiscal year beginning July 1, 2007, given by the Government Finance Officers Association.

Congratulations to the City of Saco and to our Finance Director - Lisa Parker for the excellent work, and may we continue with this record in the future.

Mayor Michaud commended Ms. Parker for her excellent work.

V. AGENDA ITEMS:

A. Shadagee Road & Garfield Street Contract Award

Bids were opened for the Shadagee Road Improvement Project on Tuesday, December 11, 2007. This project was part of the Capital Infrastructure Bond issue approved by the voters in November of 2006; and includes full or partial depth reconstruction of 3,300 feet of Shadagee Road between North Street and Laliberte Circle and 1,450 of stormwater system improvements.
There were 11 bidders on the project; and low bid was submitted by D&C Construction at $453,057.50. The engineer’s estimate for the project was $537,057.00.

The 2006 Capital Infrastructure Bond also included the sidewalk and drainage project on Garfield Street. Because of the favorable bid price and the proximity of this project to the Shadagee Road project, staff is proposing consideration of an amendment to the D&C bid to include the work on Garfield Street. The engineer’s opinion of cost for the Garfield Project is $255,680 and D&C has agreed to do this project for $201,878.75 using most of the same unit prices as the Shadagee bid (the exception was the trench cap that was not a bid item in the Shadagee job and traffic control).

<table>
<thead>
<tr>
<th>Project</th>
<th>Engineer's Estimate</th>
<th>D&amp;C Cost</th>
<th>Surplus(Deficit)</th>
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<tbody>
<tr>
<td>Shadagee Road Project</td>
<td>$537,057.00</td>
<td>$453,057.50</td>
<td>$83,999.50</td>
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<tr>
<td>Garfield Road Project</td>
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<td>$201,878.75</td>
<td>$53,801.25</td>
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<tr>
<td></td>
<td>$792,737.00</td>
<td>$654,936.25</td>
<td>$137,800.75</td>
</tr>
</tbody>
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The total cost for the combined project would be $654,936.25.

Councilor Lovell moved, Councilor Morton seconded, that it be Ordered that the City Council authorize the City Administrator to execute the document titled, ‘Amendment #1 for the Shadagee Road Infrastructure Improvement Project between the City of Saco and D&C Construction, Inc, dated January 7, 2008’. Further move to approve the Order. The motion passed with six (6) yeas.

B. Accept the Audit Report

The firm of Runyon Kersteen Ouellette has been engaged to audit the city as well as the school department.

The Auditor said, “In our opinion, the financial statements of the City of Saco, Maine, as of and for the year ended, June 30, 2007, present fairly, in all material respects, the financial position of the City of Saco, Maine, and the results of its operations and the cash flows of its business type activities for the year then ended in conformity with accounting principles generally accepted in the United Stations of America.” This is a clean Audit without qualifications.

The report indicates an extremely favorable financial position going into the new-year for the City of Saco.

Councilor Cote moved, Councilor Lovell seconded, that it be Ordered that the City Council accept the “City of Saco, Maine Reports Required by Government Auditing Standards and OMB Cm_2008_01_22
Circular A-133 as well as the Comprehensive Annual Financial Report dated June 30, 2007, submitted by the firm Runyon Kersteen Ouellette. Further move to approve the Order. The motion passed with six (6) yeas.

C. Acceptance of Portions of Smith Lane

The portion of Smith Lane from Academy Place to the Paul Hazelton House is offered for acceptance as a City street by the developers of the Shannon Woods condominium and the Church of Jesus Christ of Latter Day Saints. The nature of each development allowed for a portion of Smith Lane to be extended – 1,700 feet on Shannon Woods property, and 800 feet on the Church property – and connected, so that what was previously two separate dead-end streets, Smith Lane and Shannon Lane, is now a single, connected road. The portions in question were designed and built to City specifications, and have been subject to inspection while under construction.

The warranty deed with metes and bounds description have been submitted for each segment, and reviewed by the City Attorney and by Public Works. Record drawings have been prepared, reviewed, and found acceptable. On December 4, 2007, the Planning Board considered this request and recommends acceptance as requested.

“Be it ordered that the City Council move pursuant to 23 MRSA Section 3025, to accept the dedication made by Rockwood Properties, LLC, of title in fee simple of a portion of the Smith Lane right of way, as bounded and described and titled in a Warranty Deed from Rockwood Properties LLC, to the City of Saco, dated November, 2007; and to accept the dedication made by Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, of title in fee simple of a portion of the Smith Lane right of way, as bounded and described and titled in a Warranty Deed from the Church of Jesus Christ of Latter Day Saints to the City of Saco, dated December 2007. The motion passed with six (6) yeas.

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that ROCKWOOD PROPERTIES, LLC, a Maine limited liability company with a mailing address of 1022 Portland Road, Saco, Maine 04072 (“Grantor”), for and in consideration of one dollar and other valuable consideration paid by THE CITY OF SACO, whose mailing address is 300 Main Street, Saco, Maine 04072 (“Grantee”), hereby transfers and conveys unto the said Grantee, with WARRANTY COVENANTS, a certain lot or parcel of land known as Smith Lane, formerly known as Shannon Lane, southeasterly of but not adjacent to Route One in the City of Saco, County of York, and State of Maine as shown on a Subdivision/Site Plan of Shannon Woods for Rockwood Properties, LLC by Sebago Technics, Inc., dated March 19, 2002 and last revised February 11, 2004, with reference to project number 01334, recorded in the York County Registry of Deeds in Plan Book 288, Page 47, being more particularly bounded and described as follows

Beginning at a monument located N 51°-27’-35” E, 9.00 feet from the easterly terminus of Smith Lane, formerly known as Shannon Lane;

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Thence S 38°-32'-25” E, by and along land of Prendergast Family Partnership, a distance of 289.85 feet to a monument set;

Thence continuing S 38°-32'-25” E, by and along land to be conveyed to Prendergast Family Partnership as shown on said Plan, a distance of 68.18 feet to a monument set at a point of curvature;

Thence by and along a curve to the right with a radius of 175.00 feet, a length of 313.21 feet, having a chord of S 12°-43'-58” W, 273.05 feet to a monument set at a point of tangency;

Thence S 64°-00'-20” W, a distance of 156.29 feet to a monument set at a point of curvature;

Thence by and along a curve to the left with a radius of 125.00 feet, a length of 34.19 feet, having a chord of S 56°-10'-08” W, 34.09 feet to a monument set at a point of tangency;

Thence S 48°-19’-56” W, a distance of 237.53 feet to a 5/8-inch capped rebar set at land now or formerly of The Church of Jesus Christ of Later Day Saints;

Thence N 38°-08'-00” W, by and along land of said Church, a distance of 50.10 feet to a 5/8-inch capped rebar set;

Thence N 48°-19’-56” E, a distance of 234.44 feet to a monument set at a point of curvature;

Thence by and along a curve to the right with a radius of 175.00 feet, a length of 47.87 feet, having a chord of N 56°-10'-08” E, 47.72 feet to a monument set at a point of tangency;

Thence N 64°-00'-20” E, a distance of 156.29 feet to a monument set at a point of curvature;

Thence by and along a curve to the left with a radius of 125.00 feet, a length of 223.72 feet, having a chord of N 12°-43’-58” E, 195.03 feet to a monument set at a point of tangency;

Thence N 38°-32’-25” W, a distance of 70.17 feet to a 5/8-inch capped rebar set at Academy Place, as shown on said Plan;

Thence continuing N 38°-32’-25” W, by and along said Academy Place, a distance of 288.00 feet to a monument set at the existing terminus of Shannon Lane;

Thence N 51°-27’-35” E, by and along said terminus of Shannon Lane, a distance of 41.00 feet to land of Prendergast Family Partnership;

Thence continuing N 51°-27’-35” E, along land of Prendergast Family Partnership, a distance of 9.00 feet to the POINT OF BEGINNING.

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Bearings are based on Magnetic North.

IN WITNESS WHEREOF, the said Rockwood Properties, LLC, has caused this instrument to be signed, this ____ day of November, 2007.

ROCKWOOD PROPERTIES, LLC

______________________________
By: _________________________
Witness

______________________________
R. Elliott Chamberlain
Authorized Member

State of Maine
York, ss. November ___, 2007

Personally appeared the above-named R. Elliott Chamberlain, Authorized Member of Rockwood Properties, LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said company.

Before me,

________________________________________________________
Notary Public/Attorney-at-Law

________________________________________________________
Printed Name

WARRANTY DEED

NOW COMES the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, a Maine Corporation, with a principal office at Smith Lane, Saco, Maine, which for one dollar and other valuable consideration, herein transfers and conveys, with Warranty Covenants, to the CITY OF SACO, a Municipal Corporation, 300 Main Street, Saco, Maine, a certain parcel of land in Saco, Maine, which parcel is an extension of Smith Lane, so-called, the parcel more particularly bounded and described as follows:

Beginning at a concrete monument set at the southerly terminus of Smith Lane, said point of beginning being North 50° -59’ -30” East, 10.13 feet along the southerly terminus of said Smith Lane from an iron rod found, 1 inch above grade with survey cap marked “D&C 1293” at the southeasterly corner of land of Saco VOA Elderly Housing, Inc. as described in deed recorded at the York County Registry of Deeds in Book 9063, Page 277;
Thence, North 50° -59’ -30” East, 50.52 feet by the southerly terminus of said Smith Lane;

Thence, North 47° -25’ -30” West, 10.16 feet to a concrete monument set at land of Shannon Woods Condominium as shown on “Condominium Plan of Shannon Woods Shannon Lane Saco, Maine for Record Owner: Rockwood Properties, LLC” dated December 4, 2003, surveyed by Sebago Technics and recorded in the York County Registry of Deeds in Condominium File 612, Page 1;

Thence, Generally easterly by said land of Shannon Woods Condominium and a circular curve deflecting to the left an arc distance of 183.79 feet to a concrete monument set, the chord of said curve bearing South 89° -32’ -50” East, 167.68 feet, the radius of said curve being 125.00 feet;

Thence, North 48° -19’ –51”East, 139.36 feet by said land of Shannon Woods Condominium to a point, said point being South 53° -55’ -57” West, 0.48 feet from an iron rod found, 2 inches below grade with survey cap marked “STI PLS 2117”;

Thence, South 38° -08’ -00” East, 50.10 feet by said land of Shannon Woods Condominium to an iron rod found flush with grade with survey cap marked “STI PLS 2117” at the Northerly corner of remaining land of Grantor herein;

Thence, South 48° -19’ 51” West, 136.27 feet by said remaining land of the Grantor herein to a concrete monument set;

Thence, Generally westerly by said remaining land of the Grantor herein and a circular curve deflecting to the right an arc distance 254.54 feet to the point of beginning, the chord of said curve bearing North 89° -59’ -59” West, 232.69 feet, the radius of said curve being 175.00 feet;

Containing 17,595 square feet or 0.40 acres, more or less.

The above bearings refer to the 1976 magnetic meridian.

The above mentioned concrete monuments set are 4 inch by 4 inch concrete monuments with plastic survey plug marked “PLS 1350” set in ½ drill hole.

Meaning and intending to describe and transfer that land comprising the extension of Smith Lane from its current terminus abutting land n/f Saco VOA Elderly Housing and Smith Lane’s proposed new terminus at land n/f of Rockwood Properties, LLC also known as Shannon Woods Condominiums, all as detailed on its Site Plan approved by the Saco Planning Board on April 8, 2003. See a sketch prepared by Corner Post Surveying dated December 4, 2007 attached hereto as Tab 1.

TO HAVE and TO HOLD with all the benefits and privileges appurtenant thereto, for itself and its successors and assigns, now and forever.

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Dated at Saco, Maine this ____ day of December, 2007.

WITNESS:  

____________________________  CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS

____________________________  ________________________________

Print Name  Print Name / Title

STATE OF MAINE  

YORK, ss.  December ____, 2007

Then personally appeared before me_________________________, who gave oath and acknowledged the foregoing to be his free act and deed, and the free act and deed of the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, and of his authority herein to act on its behalf.

Before me,

____________________________  
Notary Public/Attorney At Law
D. (First Reading) Code Amendment §211-80 Permit Parking

In 2007, the Council passed Chapter 211-80 “Permit Parking” to establish permit parking in some of the City’s downtown lots. The Gooch Street lot has experienced significant and ongoing disruptions caused by the Island Point Project and the train station construction, and it is apparent that the number of spaces will need adjustment periodically to deal with the public’s needs. Similar problems exist also at the Free Street lot, where demand has not yet met the need for the set aside six (6) spaces, resulting in a loss of available parking for other lot users.

Police Chief Paul recommends moving the process of determining the appropriate number of parking spaces to the Traffic Safety Committee, where the public’s needs could be assessed and the number of spaces per lot periodically adjusted as the community’s needs change. This change would simplify the process without otherwise affecting the ordinance and allow the committee to coordinate the permit regulations with the other parking regulations in place in each lot.

Councilor Lovell moved, Councilor Morton seconded, that the City of Saco hereby ordains and approves the First Reading of the document titled, ‘Code Amendment §211-80 Permit Parking, dated January 7, 2008’, and further moves to set the Public Hearing for February 4, 2008. The motion passed with six (6) yeas.


(Please note underline represents new language while strikethrough represents language to be deleted)

A. Purpose. The purpose of this sub-section is to allow business owners, employees and residents to park in the municipal parking lots, exempted from the two-hour parking restriction.

B. Location of parking lots. Parking lots subject to this section include the Free Street Lot and the Gooch Street Lot.

C. Parking Permit Regulations. Permittees shall be subject to the following regulations:
   a. Permits for parking spaces in the parking lots shall be issued by the City Clerk on either an annual or a month-to-month basis for a fee established by the City Council at a public hearing. Annual permits shall be valid for a single calendar year (January thru December). Annual permits may be purchased at any time during a calendar year and the fee will be prorated at a monthly basis for the number of months remaining in that year.
      i. Up to six (6) permits for parking spaces shall be issued for the eastern side of the Free Street Lot,
      ii. Up to twenty three (23) permits for parking spaces shall be issued for the southern side of the West lot on Gooch Street

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b. The number of permitted parking spaces at each location shall be determined by the Traffic Safety Committee, and subject to any existing agreements concerning said lots.

c. Any permits not renewed by the 25th of the month for which the permit was issued shall be considered available for the next month and may be assigned to another user on a first come, first serve basis.

d. No one business, corporation or individual may hold more than 25% of the available parking permits in any given month or for any given year.

e. No vehicle shall be allowed to park in a spot designated “Permit Parking Only” unless properly displaying a City of Saco Parking Permit. Parking permits must be clearly displayed in the windshield of the vehicle, either by hanging the permit from the vehicle’s rearview mirror or affixing it to the windshield. Anyone receiving an overtime parking ticket because the permit was not properly displayed shall be responsible for paying the full violation amount.

f. Permitted vehicles should be parked in the designated “Permit Parking Only” area; however, if the designated “Permit Parking Only” area is full, permitted vehicles may park in any other space in the Parking Lot that is available.

g. Parking Permits are issued to individuals and may be used only on vehicles owned by the permittee.

h. Permitted vehicles may not be parked overnight during the City’s winter parking ban, except as otherwise posted.

i. The Police Chief shall have the authority to revoke any parking permit if the holder of that permit fails to follow these regulations or any other relevant provision of this Code. Any such revocation may be appealed to the City Administrator.

D. Permit Hours. Permit restrictions and regulations shall be in effect from 7:00 AM to 6:00 PM.

E. Dedication of Funds. All revenues collected for Parking Lot parking permits shall be deposited into a dedicated reserve account to be used for the maintenance and improvement of City parking lots and/or the establishment, maintenance and improvement of other parking facilities.

E. Combined Establishment/Massage Therapist License Application – Gagne

Laurence Gagne whose business location is 209 Main St., Suite 301, has applied for a Combined Establishment/Massage Therapist License.

The applicant has paid all applicable permit fees and has provided a license issued by the State of Maine in compliance with Chapter 138 § 138-9 Basic proficiency.

Councilor Cote moved, Councilor Bastille seconded Be it Ordered that the City Council grant Laurence Gagne, a Combined Establishment/ Massage Therapist License, in accordance to the Codes of the City of Saco, Chapter 138. Further move to approve the Order. The motion passed with six (6) yeas.
Councilor Lovell moved, Councilor Mills seconded to recess. The motion passed with six (6) yeas. TIME: 7:25 p.m.

Mayor Michaud reconvened the Council Meeting at 9:35 p.m.

Maine State Lighting Project Agreement

The City has successfully obtained funding for a portion of the Main Street Lighting Project from the Maine Department of Transportation (MDOT). In 2006, the City applied to the State for funding for the Factory Island portion of the Main Street Lighting Project. That portion of the project was funded in the Biennial Capital Work Plan. Subsequent to that application, a separate project to install the lighting on Factory Island by the Island Point developers was approved. Since the developer will be installing the lighting, City requested that the MDOT funding for the island project be reallocated to the northerly end of the improved Main Street Lighting Project. This is the proposed lighting project approved in the 2007 Capital Infrastructure bond.

The MDOT will approve the alternate project, but will cap the funding at the amount allocated for the original project of $317,000. The project is designed and ready to bid pending the final authorization by the State. The project will require that the City enter into a Local Enhancement Project (LEP) agreement with the State.

Councilor Cote moved, Councilor Morton seconded, that it be Ordered that the City Council authorize the City Administrator to execute the ‘Transportation Enhancement Project Agreement between the City of Saco and the State of Maine, Department of Transportation – Federal Project Number STP-1569(100) x, State Pin # 015691.00’. Further move to approve the Order. The motion passed with six (6) yeas.
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 CITY shall develop and prepare all of the necessary design plans, specifications, estimates and contract documents for the PROJECT, as directed by the DEPARTMENT, in accordance with the DEPARTMENT’s standards and procedures for procuring construction contracts for Federal-aid projects. The CITY shall submit all such plans, specifications, estimates and contract documents to the DEPARTMENT for review and approval prior to procuring any such contract.

1. All design shall conform to the applicable standards of the MDOT Standard Specifications (December 2002) and MDOT Standard Details (December 2002).

2. All plans and specifications shall adhere to the DEPARTMENT’s utility accommodation policy as set forth in its “Policy On Above Ground Utility Locations”.

3. The CITY shall develop and prepare all documentation relating to utilities, be responsible for coordinating all matters relating to utilities, and submit all necessary documentation to the DEPARTMENT prior to requesting authorization to solicit competitive bids.

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 obtain all approvals, permits and licenses required to construct the PROJECT.

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

I. 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 inviolate 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.

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.

6. The CITY shall maintain and operate the completed facility for its intended public purpose for a period of twenty (20) years or its useful design life, whichever is longer.

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

If by “force account”:

The CITY agrees to conduct all work pursuant to the provisions of 23 CFR 635.201 - 635.205.
If by competitive bids:

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 Seventeen Thousand and Three Hundred Dollars ($317,300). In no event shall the total of all such participating PROJECT costs exceed the sum of Three Hundred Seventeen Thousand and Three Hundred Dollars ($317,300), 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, or 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 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 up to Three Hundred Seventeen Thousand and Three Hundred Dollars ($317,300) in accordance with all applicable Federal laws and regulations as hereinbefore referenced under ARTICLE II, Paragraph O.

B. The MUNICIPALITY shall be responsible for all federally eligible costs in excess of Three Hundred Seventeen Thousand and Three Hundred Dollars ($317,300) and all of the non-Federal-State participating PROJECT costs for the PROJECT. The MUNICIPALITY 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.

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 five (5) 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 herebefore 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 deductions 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 to 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 hereinafore 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 hereinafore 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.
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TRANSPORTATION ENHANCEMENT
PROJECT AGREEMENT
between the
City of Saco
and the
State of Maine, Department of Transportation
Federal Project Number STP-1569(100)X, State PIN (015691.00)

This AGREEMENT is made this ______ day of ____________, 2008, 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 Saco, a municipal
corporation and body politic, having its principal office in the City of Saco, County of York, State of Maine
(hereinafter called the CITY).

WITNESSETH

WHEREAS, the project described herein was selected by the DEPARTMENT for inclusion in its
2008-2009 Biennial Transportation Improvement Program for partial funding; and,

WHEREAS, this AGREEMENT sets out the terms and conditions of the DEPARTMENT's
Transportation Enhancement funding to the CITY;

WHEREAS, the CITY agrees to construct future sidewalk lighting improvements on Main Street from
Cataract Bridge to the Saco/Biddeford Bridge, in Saco Maine with CITY or private funding;

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 design, develop and construct sidewalk lighting improvements on Main Street
between North Street and Cutts Avenue, in Saco, 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 Seventeen Thousand and Three Hundred
Dollars ($317,300) 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.
I. ADJOURNMENT.

Councilor Cote moved, Councilor Morton seconded, to adjourn. The motion passed with six (6) yeas. TIME: 9:36 p.m.

ATTEST: 
Lucette S. Pellerin, City Clerk