**MAINE DEPARTMENT OF TRANSPORTATION**

**Small Harbor Improvement Program Agreement**

With

Regarding

(Payable)

***MaineDOT Use Only***

MaineDOT WIN:       Municipality’s Vendor #:

Agreement Amount: $      Effective Date:

State Share: $      Expiration Date:

Local Share:

This Agreement for a state-funded project is between the State of Maine Department of Transportation (**MaineDOT**), with its headquarters located at 24 Child Street in Augusta, Maine, and       (the **Municipality**), with its administrative offices at      , which jointly shall be referred to as the **Parties**.

**RECITALS**

1. This Agreement shall apply to       (**Project**); and
2. MaineDOT selected the Project for funding from the State of Maine (the **State**) through its Small Harbor Improvement Program (SHIP), with construction funding to be appropriated in      ; and
3. The Municipality shall undertake the work as a Locally Administered Project, subject to MaineDOT oversight to ensure that all requirements of this Agreement are met.

**AGREEMENT**

NOW, consideration of the foregoing, MaineDOT and the Municipality agree to the following:

**APPENDICES**

Appendix A: Municipality’s SHIP Application.

**ROLES AND RESPONSIBILITIES**

1. ROLE OF MUNICIPALITY. The Municipality shall assign an officer or employee of the Municipality to manage the Project and carry out the Municipality’s responsibilities under this Agreement. This Project Coordinator shall abide by applicable sections of the latest edition of MaineDOT’s Local Project Administration Manual & Resource Guide (LPA Manual).

* Project Coordinator:

Email:

Phone:

1. ROLE OF MAINEDOT. MaineDOT will assign a Project Manager to carry out the State’s responsibilities. The Project Manager or designee will have the authority to request changes to the Project design to meet applicable laws and design standards; accept and reject invoices; inspect construction activities; and take all other action to ensure proper performance of this Agreement.

* Project Manager:      , Multimodal Program

Email:      @maine.gov

Phone: 207-

**FINANCIAL OBLIGATIONS**

* + - 1. AUTHORIZATIONS. State financial participation in the Project shall be contingent upon completion of the steps set out below:

1. For the design/permitting stage, MaineDOT must execute this Agreement and issue the Municipality a written notice to proceed with reimbursable pre-construction work; and
2. For the construction stage, MaineDOT must approve the final plans, specifications and estimate (PS&E) and issue the Municipality written construction authorization.
   * + 1. PROJECT COST. The estimated cost of the Project is $      (Project Cost). If the actual cost of the Project proves to be less than this estimated amount, the final amount owed to the Municipality will be adjusted based on the percentages set out below.
   1. STATE SHARE. MaineDOT, using funding from SHIP, will share in the Project Cost up to a maximum contribution of       percent of the total or **$**, whichever is less.
   2. LOCAL MATCH. The Municipality shall share in the Project Cost at the approximate rate of       percent, for an estimated local match of **$**, and shall be fully responsible for:
      1. All costs exceeding $     , unless MaineDOT approves otherwise by executing a modification to this Agreement; and
      2. All costs that MaineDOT determines to be ineligible for reimbursement; and
      3. All costs incurred before the execution of this Agreement.
3. REIMBURSEMENT. The Municipality may invoice MaineDOT periodically for reimbursement of the State’s share of costs incurred on the Project. Progress invoices should be modeled after *Letter 4* from the LPA Manual and submitted at a frequency agreed to by the Parties, as follows:
4. MaineDOT will make no payment until funding for the Project is appropriated.
5. Each invoice shall include a progress report for the service period of the invoice.
6. Each invoice shall include adequate documentation of costs incurred to satisfy the MaineDOT Project Manager.
7. Each invoice shall show MaineDOT’s and the Municipality’s portions of Project costs, including a running total of costs incurred to date.
8. The Municipality must certify that amounts claimed are correct and not claimed previously.
9. Upon completion of the work and payment of all vendor invoices, the Municipality shall send to MaineDOT a final request for reimbursement modeled after *Letter 20* from the LPA Manual. Payment of this final invoice shall be contingent upon a passing inspection of the Project by MaineDOT.
10. TERM. The Municipality shall complete the Project and submit a final invoice to MaineDOT by the Expiration Date at the top of this Agreement. The Municipality shall submit any request for a time extension to MaineDOT in writing before this Expiration Date.
11. REPAYMENT. If the Municipality withdraws its support for the Project, the Municipality shall refund all invoice payments from MaineDOT toward the Project within 30 days of receiving an invoice from MaineDOT for the same.
12. SET-OFF RIGHTS. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine’s option to withhold for the purposes of set-off any money due and owing to the Municipality under a specific project contract up to any amounts due and owing to MaineDOT regarding this Agreement, and any other agreement/contract with any State department or agency, including any agreement/contract for a term commencing before the term of this Agreement. MaineDOT shall exercise its set-off rights in accordance with standard state practices including, in cases of set-off pursuant to an audit, the finalization of the audit. *MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.*
13. OBLIGATION OF FUNDS. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that, although the execution of this Agreement by all parties manifests MaineDOT’s intent to honor its terms and to seek funding to fulfill its obligations arising hereunder, such obligations by law are subject to available budgetary appropriations by the Maine Legislature. This Agreement, therefore, creates no obligation on behalf of MaineDOT exceeding such appropriations.

**PROJECT DEVELOPMENT**

1. KICKOFF. Upon execution of this Agreement, the Municipality shall hold Project Kickoff with MaineDOT to go over the scope of work, budget, schedule, and legal requirements for the Project.
2. PROGRESS REPORTS. The Municipality shall provide MaineDOT with written progress updates upon request. If the Municipality fails to provide such updates after receiving repeated requests, MaineDOT reserves the right to declare the Municipality to be in default of this Agreement, as defined in the “Default and Termination” section of this Agreement.
3. HIRING A CONSULTANT. If the Municipality intends to hire an engineering consultant with money from the State, the Municipality shall follow the procedures in Chapter 2 of the LPA Manual, “Consultant Selection.” Consultant work either procured using the lowest price as a scoring factor or performed before the execution date of this Agreement shall be ineligible for reimbursement.
4. DESIGN. The Municipality, in coordination with its contracted consultant, shall submit a package of final design plans, specifications and an updated cost estimate (PS&E) to MaineDOT for review before requesting construction authorization, as follows:
5. MaineDOT will enforce all laws, regulations, construction standards and specifications that apply to the Project and will require changes if they are not met.
6. MaineDOT will give the Municipality construction authorization after:
7. The Municipality addresses all comments from MaineDOT; and
8. MaineDOT accepts the final PS&E package as complete.
9. PUBLIC PROCESS. The Municipality shall give the public an opportunity to learn about and comment on the Project. Before receiving construction authorization, the Municipality shall provide MaineDOT with a public process certification modeled after *Letter 10* from the LPA Manual.
10. PERMITS. The Municipality shall obtain all environmental approvals, permits and licenses for the Project. Before receiving construction authorization, the Municipality shall provide MaineDOT with an environmental certification modeled after *Letter 12* from the LPA Manual.
11. UTILITIES. Before receiving construction authorization, the Municipality shall provide MaineDOT with a utility certification modeled after *Letter 13* from the LPA Manual.
12. RIGHT-OF-WAY. Before receiving construction authorization, the Municipality shall provide MaineDOT with a certification modeled after *Letter 14* from the LPA Manual stating that it either holds title to the property upon which the Project will be constructed or has obtained rights – through easements, licenses or leases – from the owners of all property necessary for the Project.
13. IN-KIND WORK. The Municipality shall obtain prior approval from MaineDOT to use in-kind work as match. If so approved, the Municipality shall provide the following documentation:
14. The estimated number of hours of labor to be counted as match, with labor rates; and
15. The estimated quantity and price for each type of material used as match.
16. HIRING A CONSTRUCTION CONTRACTOR. Upon receiving written approval from MaineDOT, the Municipality shall use a competitive process to hire a construction contractor, as follows:
17. If the Municipality has a local procurement ordinance that requires a competitive process, the Municipality shall follow that ordinance.
18. If there is no local procurement ordinance, the Municipality shall obtain quotes from at least three (3) contractors demonstrating successful delivery of projects of comparable size and scope to the Project. Upon receiving such quotes, the Municipality shall award a contract to the qualified contractor providing the lowest quote.
19. In the alternative, where there is no local procurement ordinance, the Municipality may hold a publicly advertised bid process that conforms to the latest edition of MaineDOT’s *Standard Specifications*, Section 102, “Bidding,” and Section 103, “Award and Contracting.”
20. Negotiating with any bidder or contractor before awarding a contract for the Project shall cause the Municipality to lose funding for the Project.
21. CONSTRUCTION ADMINISTRATION. During construction, the Municipality shall provide adequate oversight to ensure that the Project is completed in accordance with the plans, specifications and contract documents for the Project. Additionally:
22. The Municipality shall hold a pre-construction meeting with notice of at least 5 working days with representatives of MaineDOT, the contractor, utilities and other parties involved in or affected by the work. An additional pre-pave meeting may be held before the start of any paving work on the Project, if applicable.
23. The Municipality shall provide a paving inspector and a concrete technician with appropriate certifications to be on site for paving and concrete placements, if applicable to the Project.
24. If applicable, the Municipality shall arrange for any materials testing necessary to comply with Minimum Testing Requirements that MaineDOT may establish for the Project, as follows:
25. An independent, accredited laboratory shall be used to test all aggregates, if applicable to the Project;
26. Core samples of pavement and concrete shall be tested at the closest MaineDOT lab, if applicable to the Project.
27. The Municipality shall submit proposed contract modifications to MaineDOT for review and concurrence. MaineDOT reserves the right to deny reimbursement to the Municipality for work performed under any modification executed without MaineDOT’s concurrence.
28. FINAL INSPECTION. MaineDOT will inspect the completed Project for compliance with the design plans, specifications and provisions of the construction contract. MaineDOT reserves the right to deny reimbursement to the Municipality for the cost of work not in such compliance.

**MAINTENANCE**

The Municipality shall maintain the completed Project for the duration of its Useful Life, as determined by generally accepted marine industry standards. Maintenance shall consist of general upkeep and repairs necessitated by weather, age and public use. MaineDOT, at its discretion, may excuse the Municipality from this maintenance responsibility if the facility is destroyed or substantially damaged by a storm or other catastrophic event. ***This Operation and Maintenance section shall survive the expiration of this Agreement.***

**PROJECT RECORDS**

1. Project Records, whether printed or electronic, shall consist of all plans, specifications, contracts, reports, notes, or other documents prepared by or for the Municipality (Project Records). The Municipality shall retain all Project Records for at least **3 years** from the date of MaineDOT’s acceptance of the final invoice for the Project or the termination of this Agreement, whichever is sooner. If any litigation, claim, negotiation or audit has begun before the end of this retention period, all Project Records shall be kept at least until all related issues are resolved.
2. The Municipality and any contracted party working on its behalf shall allow representatives of the State of Maine to inspect and audit Project Records. Copies shall be furnished at no cost to the agencies requesting them.
3. ***This Project Records section shall survive the termination or expiration of this Agreement.***

**GENERAL PROVISIONS**

1. GOVERNING LAW. This Agreement shall be governed in all respects by the laws, statutes, and regulations of the State of Maine.
2. CONFIDENTIALITY. The Municipality shall protect the confidentiality of the construction estimate, before awarding a contract, as required by of 23 M.R.S. §63, “Confidentiality of Records.”
3. EQUAL OPPORTUNITY. During the performance of this Agreement:
4. The Municipality shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religion, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation. The Municipality shall take affirmative action to assure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The Municipality agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this section.
5. The Municipality – in all solicitations or advertising for employees placed by or on behalf of the Municipality relating to this Agreement – shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
6. The Municipality shall cause the foregoing provisions to be inserted into any contract for work covered by this Agreement so that such provisions shall be binding upon each contractor, except for contracts or subcontracts for standard commercial supplies or raw materials.
7. INDEPENDENT CAPACITY. The Municipality, its employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
8. FLOW DOWN. Contracts between the Municipality and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
9. BINDING EFFECT. MaineDOT and the Municipality shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.
10. ENTIRE AGREEMENT. This document represents the entire Agreement between MaineDOT and the Municipality. Neither MaineDOT nor the Municipality shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

**INDEMNIFICATION AND INSURANCE**

1. INDEMNIFICATION. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its officers, employees, agents, consultants or contractors. Nothing herein shall waive any defense, immunity or limitation of liability available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. ***This indemnification section shall survive the termination or expiration of this Agreement.***
2. INSURANCE. The Municipality shall carry insurance coverage at its own expense adequate to fund its indemnity, liability and other obligations arising from or related to this Agreement. The Municipality shall require all consultants and contractors hired for work pursuant to this Agreement to carry a commercial general liability insurance policy providing coverage of at least $1,000,000.00 per occurrence listing both the Municipality and the MaineDOT as additional insureds.

**CONFLICTS OF INTEREST**

1. No officer or employee of the Municipality with a financial or other personal interest in any contract or subcontract for the Project shall negotiate, make, accept or approve any such contract or subcontract.
2. No professional performing services for the Municipality on the Project shall have a financial or other personal interest in any contract or subcontract for the Project, other than the person’s employment or retention by the Municipality.
3. No person or entity entering into a contract for services on the Project shall have a financial or other personal interest in the Project or in its outcome, other than the performance of the contract. This prohibition applies to the following:
4. Any agreement with, or other interest involving, third parties having an interest in the outcome of the Project that is the subject to the contract; and
5. Any agreement providing incentives or guarantees of future work on the Project or related matters; and
6. Any interest in property acquired for the Project unless such real property interest is openly disclosed to the Municipality before the person or entity enters into the contract.

**THIRD-PARTY CERTIFICATION**

By signing this Agreement, the Municipality certifies that if it contracts with an entity, the Municipality shall require that entity and its principles to certify that they:

1. Have not within a 3-year period preceding the date of such contract been convicted of a crime or had a civil judgment rendered against them in connection with obtaining, attempting to obtain, or performing a federal, state or local public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
2. Are not indicted for or otherwise criminally or civilly changed by a federal, state or local governmental entity with commission of any offense enumerated in this section; and
3. Have not within a 3-year period preceding this Agreement had one or more federal, state or local public transactions terminated for cause or default.

**DEBARMENT**

1. By signing this Agreement, the Municipality certifies to the best of its knowledge and belief that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction. If the Municipality cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the Municipality shall notify MaineDOT promptly if it or its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction.
2. The Municipality agrees that it shall not hire any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions.

**DEFAULT AND TERMINATION**

1. DEFAULT. MaineDOT reserves the right to send the Municipality a written Notice of Default if the Municipality:
2. Fails to complete the Project by the expiration date of this Agreement without receiving an extension in writing from MaineDOT beforehand;
3. Fails to respond to repeated requests for progress updates from MaineDOT;
4. Withdraws its support for the Project, resulting in cancellation of the Project;
5. Uses Project funds for a purpose not authorized by this Agreement;
6. Misrepresents or falsifies any claim for reimbursement;
7. Fails to meet the standards of performance set forth in this Agreement.
8. TERMINATION. MaineDOT will have just cause to terminate this Agreement in the event of default by the Municipality, as defined above. MaineDOT will afford the Municipality a cure period of 14 calendar days, effective on the Municipality’s receipt of Notice of Default. If the Municipality fails to address all defaults within this cure period or any longer period as MaineDOT may authorize, MaineDOT may terminate this Agreement for cause, with these conditions:
9. MaineDOT will recover from the Municipality all reimbursements made to date; and
10. The Municipality shall forfeit all funds from the State remaining in the terminated Project.

**AGREEMENT APPROVAL**

The undersigned municipal representative assures that the Municipality’s legislative body has approved the Municipality’s entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

The duly authorized representatives of MaineDOT and the Municipality have executed this Agreement effective on the date last signed below.

**Maine Department of Transportation**

By: By:

**\* Richard J. Crawford, P.E., Director \***

Bureau of Project Development

Date: Date:

***\* Pursuant to 10 M.R.S.A. §9502, et seq, I certify that the foregoing electronic signature: (a) is intended to have the same force as my manual signature, (b) is unique to myself, (c) is capable of verification, (d) is under my sole control, and (e) is linked to data in such a manner that it is invalidated if the data are changed.***

**APPENDIX A**

**Small Harbor Improvement Program Application**