



Paul R. LePage  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0016

David Bernhardt  
COMMISSIONER

August 2, 2011

Robert Malley, Public Works Director  
Town of Cape Elizabeth  
10 Cooper Drive  
Cape Elizabeth, ME 04107

**Subject:** NOTICE TO PROCEED, Shore Road Bicycle/Pedestrian Improvements, WIN 019387.00

Dear Bob:

I have enclosed for the Town's use and file one signed original of the Agreement for the above-referenced project, which calls for bicycle/pedestrian safety improvements along Shore Road, from Route 77 to Fort Williams Park. As Project Manager Paul Pottle stated in a previous e-mail, the Town is authorized to proceed with design and permitting work, effective July 29, 2011.

Going forward, the Town should direct all correspondence, invoices and questions to Paul as follows:

**By mail:** Paul Pottle, Project Manager  
Multimodal Program, Bureau of Project Development  
Maine Department of Transportation  
16 State House Station  
Augusta, Maine 04333-0016

**By telephone:** (207) 624-3555 / 557-0087  
**By fax:** (207) 624-3401  
**By e-mail:** Paul.Pottle@maine.gov

Thank you for a productive kickoff meeting on July 22. Paul and I look forward to working with the Town of Cape Elizabeth to the successful completion of the project.

Sincerely,

Mike Laberge  
Local Projects Coordinator

cc: Michael McGovern, Cape Elizabeth Town Manager, PO Box 6260, Cape Elizabeth, ME 04107



State AMS No.: \_\_\_\_\_  
MaineDOT CSN: \_\_\_\_\_  
TEDOC No.: \_\_\_\_\_

**Local Project Agreement**  
Between the  
**Maine Department of Transportation**  
And the  
**Town of Cape Elizabeth**

**Shore Road Pathway: Federal Project AC-STP-1938(700)X; State Project 019387.00**

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This Agreement for the above-referenced Project is made by and between the Maine Department of Transportation, an agency of Maine State Government having its headquarters on Child Street in Augusta, Maine ("the **MaineDOT**,"), and the Town of Cape Elizabeth, a municipal corporation and body politic having its principal administrative offices at 320 Ocean House Road in Cape Elizabeth, Maine ("the **Town**.")

WHEREAS, the Town successfully applied for funding for the Project described herein through the MaineDOT's Quality Community Program to improve pedestrian safety; and

WHEREAS, the MaineDOT selected the Project for Transportation Enhancement funding and inclusion in its 2012-2013 Biennial Capital Work Plan; and

WHEREAS, this Agreement sets out terms and conditions of the MaineDOT's funding to the Town.

NOW, in consideration of the foregoing, the **MaineDOT** and the **Town** hereby agree as follows:

**ARTICLE I. DEFINITIONS**

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- A. **PROJECT**: Design and construction of a multi-use pathway and adjacent sidewalk along a portion of Shore Road in Cape Elizabeth, Maine, to connect neighborhoods, schools, Route 77 and the village area, to be performed by or for the **Town** and accepted by the **MaineDOT** ("the **Project**.")
- B. **PROJECT COORDINATOR**: The person designated by the **Town** to administer the Project and oversee all local responsibilities. This person is the Town's liaison to the MaineDOT.
- C. **PROJECT MANAGER**: The person designated by the **MaineDOT** to oversee all State responsibilities. As the MaineDOT's liaison to the Town, this person shall serve in a review and advisory capacity to ensure that all Federal and State requirements are met.

**ARTICLE II. PROJECT DEVELOPMENT**

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- A. **FUNDING**. The **MaineDOT** has approved a total of Nine Hundred Thirty-Seven Thousand Dollars (**\$937,000**) for the Project, as further described in Article III. Project costs eligible for funding through the MaineDOT shall not exceed this amount without the **MaineDOT**'s written approval.
- B. **AUTHORIZATIONS**. The **Town** must receive authorization from the **MaineDOT** before starting any work on the Project. Any municipal costs incurred prior to such authorization will be *ineligible* for reimbursement and *will not be credited* toward the Town's match.

- C. BUDGET AND SCHEDULE. Upon receiving "Notice to Proceed" from the MaineDOT, the Town's Project Coordinator shall review with the MaineDOT Project Manager the proposed scope of work, budget and schedule for the Project. Within sixty (60) days of receiving such Notice, the Town shall provide the MaineDOT with the following:
1. Milestones and dates that shall be used to establish a baseline schedule and measure the Town's progress.
  2. An updated line-item budget of itemized costs. Once the MaineDOT has approved the budget, expenditures may not exceed any cost category or line-item amount by more than ten percent (10%) without the MaineDOT's written approval.
- D. SCOPE CHANGES. Any change(s) to the scope of work or objectives of the Project shall be approved by the MaineDOT, through a fully executed Modification to this Agreement.
- E. CONSULTANT SERVICES. The Town may hire a consultant for design and engineering services, as follows:
1. A qualifications-based selection process shall be used, pursuant to Part 172 of Title 23 of the U.S. Code of Federal Regulations (CFR), "Administration of Engineering and Design Related Service Contracts." Price cannot be a scoring factor.
  2. No contract shall be awarded without the approval of the MaineDOT.
  3. The most recent version of MaineDOT's *Consultant General Conditions* shall govern all design or other non-construction work.
- F. DESIGN. Design plans, specifications, estimates and contracts shall be prepared in accordance with the MaineDOT's standards and procedures. Design shall conform to applicable sections of both the MaineDOT's *Standard Specifications* and its *Standard Details* (December 2002.) All such documents shall be submitted to the MaineDOT for review and approval before the Town requests authorization to advertise the Project for construction.
- G. UTILITIES. Plans and specifications shall conform to the MaineDOT *Utility Accommodation Policy*. The Town or its consultant shall coordinate all matters regarding utilities, prepare all documentation, and submit such documentation to the MaineDOT for review before requesting authorization to advertise the Project.
- H. PERMITS. The Town or its consultant shall obtain all approvals, permits and licenses necessary to construct the Project. Copies shall be provided to the MaineDOT.
- I. ENVIRONMENTAL PROCESS. The Town or its consultant shall prepare and submit to the MaineDOT for review all required environmental documents. The MaineDOT shall submit to the Federal Highway Administration all documentation required under the *National Environmental Policy Act*.

- J. PUBLIC PARTICIPATION. The Town shall provide for public participation as necessary to meet Federal/State requirements and shall notify the MaineDOT Project Manager of all public meetings.
- K. PROPERTY ACQUISITION. Given that Shore Road is a State-aid road, the MaineDOT has primary responsibility for acquiring any property rights necessary to construct and maintain the Project. If the MaineDOT delegates this responsibility to the Town, the following process shall be followed:
1. Because this is a federally funded project, the Town shall follow the *Uniform Relocation Assistance and Real Property Acquisition Act of 1970* (49 CFR, Part 24).
  2. Upon completion of the right-of-way process, the Town shall certify in writing to the MaineDOT that it has acquired all property rights.
- L. FORCE ACCOUNT. If the Town intends to construct the Project with its municipal work force rather than hiring a construction contractor through competitive bidding, it must provide the MaineDOT with a Public Interest Finding and obtain the MaineDOT's written approval before proceeding. If approved to use a "Force Account" process, the Town shall comply with applicable Federal regulations – 23 CFR, Parts 635.201 to 635.205.
- M. ADVERTISE AND AWARD. If a construction contractor is to be hired through competitive bidding, the Town shall obtain the MaineDOT's authorization before advertising the Project. After receiving such authorization, the Town shall follow the process outlined below:
1. The Town shall solicit bids in accordance with the plans and specifications that the MaineDOT has approved.
  2. The Town shall follow Federal/State procurement policies and procedures, unless otherwise approved in writing by the MaineDOT.
  3. The Town and the MaineDOT may accept or reject any and all bids.
  4. The Town shall not award a contract without the MaineDOT's written approval.
  5. The contract must specify that the Project comply with the MaineDOT's *Standard Specifications* (December 2002) and applicable special provisions.
  6. Upon contract award, the Town shall hold a preconstruction meeting involving the MaineDOT Project Manager, the contractor, and all utilities and other parties involved in the construction process.
- N. CONSTRUCTION. The Town shall administer any construction contract and provide the supervision, inspection and documentation needed to ensure that the Project is completed to the MaineDOT's satisfaction in accordance with the plans, specifications and provisions of the contract, as follows:
1. Either the Town's Project Coordinator or a qualified designee certified by the MaineDOT in Local Project Administration shall be responsible for the Project at all times.

2. The **Town** shall use procedures acceptable to the MaineDOT to document the quantity and quality of all construction-related work. The **Town** shall provide weekly progress reports and shall retain all documentation as provided under Article VI.A.
  3. The **Town** shall provide for all required materials testing.
  4. Traffic in work zones shall be controlled in accordance with Part VI of the Federal *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD).
  5. The **Town** shall upon completion provide the **MaineDOT** with "as-built" plans on Mylar or other acceptable archival-quality material.
  6. Upon completion, the **Town** 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 **MaineDOT**.
- O. **INSPECTION**. The **MaineDOT** may inspect construction activities and documentation – and test any materials used – to ensure compliance with the construction contract. The **MaineDOT** may reject any work or materials not in such compliance.
- P. **MAINTENANCE**. The **Town** shall develop and implement – or cause to be developed and implemented – a maintenance plan acceptable to the MaineDOT ensuring that the completed facility is kept up appropriately for at least **twenty (20) years**. Maintenance, at a minimum, shall consist of general upkeep and repairs necessitated by weather, age and public use.

### ARTICLE III. COST-SHARING & REIMBURSEMENT

- A. **MaineDOT SHARE**. The **MaineDOT** – using Federal Highway Administration funding – shall be responsible for an amount not to exceed Seven Hundred Twenty-Nine Thousand Dollars (**\$729,000**) in federally eligible Project costs.
- B. **LOCAL SHARE**. The **Town** shall be responsible for a non-Federal matching share of at least Two Hundred Eight Thousand Dollars (**\$208,000**), including its share of Project-related costs incurred by the MaineDOT as described under Paragraph C of this Article III.
1. Additionally, the **Town** shall be responsible for all costs deemed *ineligible* for Federal funding and/or exceeding Nine Hundred Thirty-Seven Thousand Dollars (**\$937,000**), unless otherwise approved in writing by the **MaineDOT** through a fully executed Modification to this Agreement.
- C. **MAINEDOT COSTS**. All costs incurred by **MaineDOT** staff in the development and oversight of the Project *shall be accounted for with Project funds*. Such costs may include, without being limited to: design reviews, environmental support, survey, right-of-way support, and construction engineering.
- D. **REIMBURSEMENT**. The **MaineDOT** shall reimburse the **Town** for the Federal portion of eligible Project costs described in Paragraph A, as follows:

1. The **Town** shall bill the **MaineDOT** no more frequently than monthly for such costs, which are incurred whenever work is performed, goods and services are received, or a cash payment is made. All bills are subject to the following conditions:
  - Claims shall be submitted on the Town's billhead and reference WIN 019387.00.
  - Each invoice shall contain an itemized account of expenditures consistent with the approved Project budget required in Article II.C.2. Backup documentation and proof of payment made must accompany each invoice.
  - Each invoice must have an accumulative total by budget line item and a breakdown of the MaineDOT's and Town's shares of total costs.
  - Each claim shall include a certification from the Town's Project Coordinator that all amounts claimed are correct, due and not claimed previously, and that all applicable work was performed in accordance with the terms of this Agreement.
  - Any claim for less than one thousand dollars (\$1,000) shall be deferred until the next regular billing period in which at least one thousand dollars (\$1,000) is incurred or until a final invoice is submitted for reimbursement.
- E. The **MaineDOT** shall recover any payment to the **Town** for any action or activity that subsequently is deemed ineligible for Federal funding. The **MaineDOT** shall have the additional remedy of withholding Project-related reimbursements to the **Town**.
- F. The **MaineDOT** reserves the right to recover any payment found to have arisen from errors, omissions or failures by the **Town** to meet professional standards of construction engineering and inspection, through reductions in future reimbursements or through its common law, equitable and statutory rights of set-off. The **MaineDOT** shall notify the Town of any such claim and give the Town full opportunity to defend itself. If it is later determined that any such reduction was made in error, the **MaineDOT** shall promptly repay any amount so reduced.

#### **ARTICLE IV. NON-APPROPRIATION**

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- A. Notwithstanding any other provision of this Agreement, the **MaineDOT** shall be released from its obligation to make payment toward the Project – and shall terminate this Agreement upon thirty (30) days' written notice to the **Town** – if any of the following occurs:
  1. The MaineDOT does not receive adequate funds to support this Project; or
  2. Funds otherwise programmed for this Project are de-appropriated; or
  3. The MaineDOT does not receive the authority to expend funds otherwise programmed for this Project from the Maine State Legislature or Maine courts.

## ARTICLE V. TERMINATION AND DEFAULT

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- A. The **MaineDOT** reserves the right to terminate the payment provisions of Article III in the event of default by the **Town**, which is defined as:
1. Failure to show substantial progress – as determined by the MaineDOT Project Manager – within 18 months of being given notice to proceed.
  2. Use of Project funds for a purpose other than what is authorized by this Agreement;
  3. Misrepresentation or falsification of any claim submitted for reimbursement;
  4. Failure to monitor adequately the quality of materials used and/or all work performed under this Agreement by any consultant or contractor;
  5. Breach of any material provision(s) of this Agreement.
- B. The **MaineDOT** shall notify the **Town** in writing within five (5) days of learning of an event leading to a claim of default. If the **Town** fails to take corrective action within fifteen (15) days of receiving notification, the **MaineDOT** may terminate this Agreement upon written notice to the **Town**.
1. Upon receiving notification, the **Town** and all consultants and contractors associated with the Project shall immediately cease work – except for any work required to protect public health and safety – and turn over to the **MaineDOT** all Project records and documentation within thirty (30) days of the effective date of such termination.
- C. If default occurs, the **MaineDOT** reserves the right to require the **Town** to repay any reimbursement(s) of Federal funds for Project-related work. The **Town** shall forfeit any remaining Federal funds in the Project.

## ARTICLE VI. RECORDS RETENTION, ACCESS & AUDIT

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- A. **RETENTION.** All printed and electronic Project records prepared by the **Town**, its consultant(s) and contractor(s) shall be retained for **at least five (5) years** from the date of the **MaineDOT**'s acceptance of the **Town**'s final claim for reimbursement in accordance with 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," except as otherwise provided below:
1. If any litigation, claim, negotiation, audit or other action involving such records has begun before the expiration of five (5) year period, then all records shall be retained at least until all action and resolution of all issues arising from it are complete.
- B. **ACCESS.** The **Town** and its consultant(s) shall allow authorized representatives of the State of Maine and the Federal Government to inspect and audit pertinent Project documents. Copies of requested documents shall be furnished at no cost.
- C. **AUDIT.** Audits shall meet the "Generally Accepted Government Auditing Standards."

## ARTICLE VII. GENERAL PROVISIONS

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- A. Laws and regulations. All activities conducted pursuant to this Agreement shall comply with applicable laws and regulations, including without limitation the following: Title 23 in the United States Code (USC) for statutory law and Title 23 in the Code of Federal Regulations (CFR) for administrative law.
- B. Independent capacity. When carrying out the provisions of this Agreement, the **Town**, its employees, contractors, consultants and/or agents are not acting as employees or agents of the **MaineDOT**.
- C. Indemnification. To the extent permitted by law, the **Town** shall indemnify and hold harmless the **MaineDOT**, its agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the **Town**, its consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law.
1. *This provision shall survive any termination or expiration of this Agreement.* It shall remain effective until specifically terminated or modified in writing by the parties to this Agreement or negated by law.
- D. Flow down. All contracts between the **Town** and any consultant, contractor or other third party shall contain or incorporate by reference all applicable provisions of this Agreement.
- E. Changes. Any changes to the terms of this Agreement shall be approved by the **MaineDOT**, through a fully executed Modification to this Agreement.
- F. Equal Employment Opportunity (EEO). The **Town** shall comply with applicable EEO requirements:
1. During the performance of any work undertaken pursuant to this Agreement, the **Town** shall not discriminate against any employee or applicant for employment because of race, color, religious creed, gender, national origin, ancestry, age, sexual orientation, or disability unless related to a bona fide occupational qualification. The **Town** shall take *affirmative action* to ensure that all such qualified applicants are employed and that all such employees are treated without regard to their race, color, religious creed, gender, national origin, ancestry, age, sexual orientation, or disability during any period of employment under this Agreement. Such action shall include, without limitation: employment, upgrading, demotions, transfers, recruitment, layoffs or terminations, rates of pay or other forms of compensation, and selection for training and apprenticeships. The **Town** shall post – or cause to be posted – prominently in conspicuous places readily accessible to all employees and applicants for such employment notices setting forth the provisions of this paragraph.
  2. The **Town** shall include all of the foregoing equal employment opportunity provisions in any contract for services or work under this Agreement so that the provisions are binding upon each consultant and/or contractor – except for any contract for the purchase or supply of standard commercial supplies or raw materials.



3. The Town, its contractors and consultants shall list all employment opportunities arising out of or attributable to the Project with the Maine Job Service, except for openings to be filled with personnel already employed within those organizations before the effective date hereof and not hired in anticipation hereof.

G. Third-party transference. The Town shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion of it without the written consent of the **MaineDOT**. In no case shall any such action release the Town from liability under this Agreement.

H. The Parties further acknowledge and agree that:

1. Neither the Town nor the **MaineDOT** shall be bound by any previous statement, correspondence, agreement or representation not expressly contained herein.
2. This Agreement is made and shall be construed under the laws of the State of Maine.
3. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the entire agreement, and the Parties shall negotiate a new clause, section or provision.

#### **ARTICLE VIII. EXPIRATION**

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All provisions of this Agreement – except for Article II.P (maintenance), Article VI.A (records), and Article VII.C (indemnification) – shall expire upon satisfactory completion of the Project or four (4) years from the date of **MaineDOT**'s signature, whichever occurs first, unless otherwise modified in writing by the parties to this Agreement.

#### **ARTICLE IX. APPROVAL**

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A. Debarment. By signing this Agreement, the Town certifies – to the best of its knowledge and belief – that it and its employees, agents and/or representatives associated with the Project:

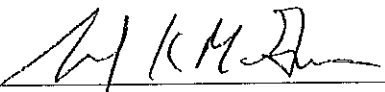
1. Are not now debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from eligible in this transaction by any Federal or State agency;
2. Have not within the previous three (3) years been criminally convicted or had a civil judgment rendered against them – and are not now criminally or civilly charged – in connection with any of the following:
  - Obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; or
  - Violating Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Have not within a 3-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.


- B. If the Town is unable to certify to any of the preceding statements in this Article IX, the Town shall attach an explanation to this Agreement.
- C. The Town agrees that it will not hire a consultant or contractor who is now debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State agency.
- D. Municipal authorization. The undersigned municipal representative assures that the **Town Council of Cape Elizabeth, Maine**, has taken all steps necessary and lawful to approve the Project and the Town's entry into this Agreement, has appropriated or authorized the use of any necessary funds, and has further authorized said representative to execute this Agreement.
- E. Federal Funding Accountability and Transparency Act (FFATA). An authorized representative of the Town shall sign the required FFATA compliance form included as *Attachment A*. This Agreement shall be considered incomplete without said signed document.

IN WITNESS WHEREOF, the MaineDOT and the Town have executed this Agreement effective on the day and date last signed.

**Town of Cape Elizabeth**

**Maine Department of Transportation**

By:   
Michael McGovern, Town Manager

By:   
Joyce Noel Taylor, Director,  
Bureau of Project Development

Date: July 22, 2011

Date: 7-26-11

*Note: An additional municipal signature is required on Attachment A, on the next page* ☞

ATTACHMENT A TO A LOCAL PROJECT AGREEMENT:  
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

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The Town of Cape Elizabeth and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act ("FFATA") of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

Because the Federal portion of the Project exceeds \$25,000, the Town shall sign this document under (B) below and return it with the Local Project Agreement. Additionally, the Town shall provide the following information, if applicable:

- A) The total compensation and names of the top five executives if:
- More than 80% of the Town's annual gross revenues are from the Federal Government; and
  - Those revenues are greater than \$25 million annually; and
  - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

B) Legal Name and DUNS® Number on File with the federal Central Contractor Registration <sup>(1)</sup>:

<i>Town of Cape Elizabeth</i>	
<i>Town of Cape Elizabeth</i>	<i>195 754 569</i>
Sign and Print Legal CCR Name	DUNS® Number <sup>(2)</sup>

<sup>(1)</sup> The Central Contractor Registration (CCR) is the primary registrant database for the U.S. Federal Government.

<sup>(2)</sup> The DUNS® Number is a unique nine-digit identification assigned and maintained by Dun & Bradstreet (D&B). DUNS® Number assignment is free for all businesses required to register with the US Federal government (see # 1 above) for contracts or grants.