



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
21 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0021

PATRICK C. KELIHER  
COMMISSIONER

## 2020 Shore and Harbor Planning Grant Award Letter

June 5<sup>th</sup>, 2019

Matthew Sturgis, Town Manager  
P.O. 6260  
320 Ocean House Rd  
Cape Elizabeth, Maine 04107

Dear Mr. Sturgis,

I am pleased to inform you that the Shore and Harbor Planning Grant review committee has recommended a grant award of \$13,750 for the Kettle Cove Boat Access Grant project. This recommendation is based on project scoring and the committee's evaluation of the impacts of the project.

We received applications for 11 projects totaling \$228,750 in requests. The review committee did its best to fund the projects that would have direct impacts on harbor planning and management and adjacent shore land development to improve public access and use. I would be happy to discuss the committee's evaluation of your project.

The grant will be awarded through a State contract procedure. Attached, please find a draft award contract for review. Once we have the terms in place, the Town will sign the contract and send two copies with original signature back to this office for processing. The grant award will be made by check directly to the Town following an invoice to the State for services performed, as detailed in the contract.

Congratulations on your successful grant proposal. I look forward to working with you to get your project underway and seeing the results!

Sincerely,

Matthew Nixon  
Deputy Director  
Maine Coastal Program  
32 Blossom Lane  
Augusta, ME 04333-0093  
207-287-1491  
[Matthew.E.Nixon@Maine.gov](mailto:Matthew.E.Nixon@Maine.gov)



**SERVICE CONTRACT**

**DATE:** 6/24/2019

**ADVANTAGE CONTRACT #:** N/A

**DEPARTMENT AGREEMENT #:** Shore and Harbor Planning Grant Program

**CONTRACT AMOUNT: \$** \$13,750

**START DATE:** 7/26/2019      **END DATE:** 12/31/2020

**This Contract, is between the following Department of the State of Maine and Provider:**

**State of Maine DEPARTMENT**

**DEPARTMENT:** Marine Resources, Maine Coastal Program

**Address:** 32 Blossom Lane

**City:** Augusta      **State:** ME      **Zip Code:** 04333

**PROVIDER**

**PROVIDER:** Town of Cape Elizabeth

**Address:** P.O. Box 6260, 320 Ocean House Road

**City:** Cape Elizabeth      **State:** ME      **Zip Code:** 04107

**Provider's Vendor Customer #:** VC1000012225

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

\_\_\_\_\_  
Department of Marine Resources

\_\_\_\_\_  
Town of Cape Elizabeth

\_\_\_\_\_  
Signature of Authorized Representative      Date

\_\_\_\_\_  
Signature of Authorized Representative      Date

\_\_\_\_\_  
Patrick Keliher, Commissioner

\_\_\_\_\_

RIDERS

<input checked="" type="checkbox"/>	The following riders are hereby incorporated into this Contract and made part of it by reference: (check all that apply)
<input checked="" type="checkbox"/>	Payment Rider
<input checked="" type="checkbox"/>	Rider A – Scope of Work
<input checked="" type="checkbox"/>	Rider B – Terms and Conditions
<input type="checkbox"/>	Rider C - Exceptions
<input checked="" type="checkbox"/>	Rider D – Certification Regarding Compliance with Federal Audit Requirements
<input checked="" type="checkbox"/>	Rider E – NOAA Requirements
<input checked="" type="checkbox"/>	Rider F – Debarment Certification
<input checked="" type="checkbox"/>	Rider G – Identification of Country in Which Contracted Work will be Performed
<input type="checkbox"/>	BAA - NA
<input type="checkbox"/>	Other – NA



**PAYMENT RIDER**

CONTRACT AMOUNT: \$ 13,750

Funding Source: The sources of funds and compliance requirements for this Contract follow:

State General Fund	\$	NA
Dedicated/Special Revenue	\$	NA
Federal Funds	\$	13,750

CODING: (Departments - Attach separate sheet as needed for additional coding.)

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OBJ	PROGRAM	PROGRAM PERIOD	BOND FUNDING	FISCAL YEAR
\$ 13,750	013	13A	Q102	02	6331	0097419		NO	FY20

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OBJ	PROGRAM	PROGRAM PERIOD	BOND FUNDING	FISCAL YEAR
		Click or tap here to enter text	Click or tap here to enter text	Click or tap here to enter text	Click or tap here to enter text	Click or tap here to enter text		Click or tap here to enter text	

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OBJ	PROGRAM	PROGRAM PERIOD	BOND FUNDING	FISCAL YEAR
Click or tap here to enter text									

(Departments – Attach a separate sheet as needed for additional coding.)

**INVOICES AND PAYMENT:**

Department will pay the Provider as follows: Payment terms are net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documents. Provider shall submit detailed invoices, itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Department and Advantage Contract numbers for this contract.

Additional Payment Requirements: NA

**RIDER A  
SCOPE OF WORK**

TABLE OF CONTENTS

- I. Acronyms
- II. Introduction/Overview
- III. Deliverables
- IV. Performance Measures
- V. Reports

I. ACRONYMS/DEFINITIONS:

The following terms and acronyms shall have the meaning indicated below as referenced in this Contract:

<b>COMMONLY KNOWN ACRONYMS AND DEPARTMENT ABBREVIATIONS</b>	
BAA	Business Associate Agreement
Contract	Formal and legal binding agreement
Department	State of Maine Department Entering into this Contract
Provider	Organization providing services under this Contract
State	State of Maine
Site	Working Waterfront Site
NOAA	National Oceanic and Atmospheric Administration

II. INTRODUCTION/OVERVIEW:

The Town of Cape Elizabeth is seeking grant funding to implement the principal recommendations in the 2018 Harbor Committee report to reconstruct a public boat access at Kettle Cove State Park, Cape Elizabeth. The grant will fund survey and engineering services to develop a preliminary plan of a new boat access facility to replace the problematic access off Kettle Cove Rd. The new boat access location is believed to include remnant gravel base material from a pre-1970's access, so soil testing is included in this development scope. The plan will support coordination with the State of Maine and development of final construction plans for which construction grant funding will be sought.

III. DELIVERABLES:

The Kettle Cove/Crescent Beach area provides the primary boat launch access for commercial fishing in Cape Elizabeth. Within close proximity to the commercial boat access only ramp is the public recreational boat access. This access is often washed out due to storm action, includes a steep slope that limits functionality and is located on the access road to the commercial only boat access. The poor functionality of the recreational boat access results in noncommercial boat activity on the commercial only boat access, despite coordinated enforcement by the state and the Cape Elizabeth Police Department. Recreational use delays commercial fisherman from off-loading catch and devaluing catch sales.

The grant award will be used to retain Sebago Technics Inc. and SW Cole to perform survey and engineering services to develop a plan for the new boat access facility. The March 8, 2019 proposal for services is attached. With preliminary engineering completed, the town will then seek funding for construction.

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IV. PERFORMANCE MEASURES: This contract's success will be measured by whether or not all of the above has been accomplished to the satisfaction of the Department.

V. REPORTS

A. Required Reports

The Provider shall track and record all data/information necessary to complete the reports listed in the table below:

	Name of Report	Description or Appendix #:
1.	One Midterm Progress Report	Progress to Date
2.	One final Summary Report	Final report on work accomplished

B. Reporting Schedule for Above Listed Required Reports

The Provider shall submit all final versions of each report listed in the table below to the Department in accordance with the deadlines established within the table:

	Name of Report:	Period Captured by Report: ("Each year/quarter/month/week")	Due Date and/or Frequency: (# days after each year/quarter/month/week")
1	Progress Report	Midterm Progress Report	March 31st, 2020
2	Final Summary Report	Final Report Submission	December 31st, 2020

The Provider understands that the reports are due within the timeframes established and that the Department will not make subsequent payment installments under this Contract until such reports are received, reviewed and accepted.

The Provider further agrees to submit such other data and reports as may be requested by the Agreement Administrator. The Provider shall submit all data and reports to the Agreement Administrator listed in section "DEPARTMENT AND PROVIDER POINT OF CONTACTS" of this Agreement.

**RIDER B  
TERMS AND CONDITIONS**

1. BENEFITS AND DEDUCTIONS. If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.
2. INDEPENDENT CAPACITY. In the performance of this Contract, the parties hereto agree that the Provider, and any agents and employees of the Provider, shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.
3. DEPARTMENT'S REPRESENTATIVE. The Contract Administrator shall be the Department's representative during the period of this Contract. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Contract are

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due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

4. CHANGES IN THE WORK. The Department may order changes in the work, the Contract Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.
5. SUB-AGREEMENTS. Unless provided for in this Contract, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Contract Administrator. Any sub-agreement hereunder Entered into subsequent to the execution of this Contract must be annotated "approved" by the Contract Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.
6. SUBLETTING, ASSIGNMENT OR TRANSFER. The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Contract Administrator. No subcontracts or transfer of Contract shall in any case release the Provider of its liability under this Contract.
7. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Contract, the Provider agrees as follows:
  - a. The Provider shall not discriminate against any employee or applicant for employment relating to this Contract because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
  - b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Contract, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
  - c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining Contract, or other Contract or understanding, whereby it is furnished with labor for the performance of this Contract a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.



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- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
  - f. Providers and subcontractors with Contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs, which programs must conform with applicable state and federal laws, rules and regulations.
  - g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
8. EMPLOYMENT AND PERSONNEL. The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any (a) state employee or (b) any former state employee who participated in any way in the solicitation, award or administration of this Agreement. This restriction shall not apply to regularly retired employees or any employee who has out of state employment for a period of twelve (12) months.
9. WARRANTY. The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Contract and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
10. ACCESS TO RECORDS. As a condition of accepting an Contract for services under this section, a Provider must agree to treat all records, other than proprietary information, relating to personal services work performed under the Contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the Department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the Provider and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the Contract and information concerning employee and Contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Contract and make such materials available at its offices at all reasonable times during the period of this Contract and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.
11. TERMINATION. (a)The performance of work under the Contract may be terminated by the Department whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the date on which such termination becomes effective. Upon such termination, the Department shall pay the Provider for work performed by the Provider prior to the date of Notice of

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Termination. (b) Either party may terminate this Agreement for cause by providing a written notice of termination stating the reason for the termination. Upon receipt of the notice of termination, the defaulting party shall have fifteen (15) business days to cure the default. If the default is of such a nature that it cannot be cured within fifteen (15) business days, the defaulting party shall have such additional time, as the parties may agree to, to cure the default, provided the defaulting party has taken steps to cure the default with the initial 15 days.

12. GOVERNMENTAL REQUIREMENTS. The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.
13. GOVERNING LAW. This Contract shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Contract shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.
14. STATE HELD HARMLESS. The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all third party claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.
15. NOTICE OF CLAIMS. The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed that is related in any way to the Contract or which may affect the performance of duties under the Contract, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Contract or which may affect the performance of duties under the Contract.
16. APPROVAL. This Contract must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.
17. INSURANCE. The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Contract with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991, may continue under that arrangement. Prior to or upon execution of this Contract, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.
18. NON-APPROPRIATION. Notwithstanding any other provision of this Contract, if the State does not receive sufficient funds to fund this Contract and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Contract.
19. SEVERABILITY. The invalidity or unenforceability of any particular provision, or part thereof, of this Contract shall not affect the remainder of said provision or any other provisions, and this Contract shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

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20. ORDER OF PRECEDENCE. In the event of a conflict between the documents comprising this Agreement, the Order of Precedence shall be:

- Rider C Exceptions
- Rider B Terms and Conditions
- Rider A Scope of Work
- Payment Rider
- Rider D Included at Department's Discretion
- Rider E Included at Department's Discretion
- Rider F Included at Department's Discretion
- Rider G Identification of Country in which contracted work will be performed
- Business Associate Agreement included at Department's Discretion
- Other Included at Department's Discretion

21. FORCE MAJEURE. The performance of an obligation by either party shall be excused in the event that performance of that obligation is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party.

22. SET-OFF RIGHTS. The State 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's option to withhold for the purposes of set-off any monies due to the Provider under this Contract up to any amounts due and owing to the State with regard to this Contract, any other Contract, any other Contract with any State department or agency, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

23. ENTIRE CONTRACT. This document contains the entire Contract of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Contract that any implied waiver occurred between the parties, which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Contract, or to exercise an option or election under the Contract, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Contract shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Contract or at law.

24. AMENDMENT: No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Provider.

25. DEBARMENT, PERFORMANCE, AND NON-COLLUSION CERTIFICATION: By signing this Contract, the Provider certifies to the best of Provider's knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this Contract:

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- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
  - i. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.
  - ii. Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
  - iv. Have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.
- c. Have not Entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

RIDER C  
EXCEPTIONS

N/A

RIDER D  
Certification Regarding  
Compliance with Federal Audit Requirements

CFDA Name: NOAA Coastal Zone Management Award to the Maine Coastal Program CFDA number: 11.419

Compliance is required by:

- 2 CFR §200.331(a)(1)(xi), (a)(2), (f) <https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-sec200-331.pdf>
- 2 CFR §200.501 (inserted below for convenience) <https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-sec200-501.pdf>
- 2 CFR §200.521(c) <https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-sec200-521.pdf>

(BEFORE SIGNING THIS CERTIFICATION, PLEASE READ THE ABOVE REGULATIONS)

§ 200.501 Audit requirements.

(a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same passthrough entity, and that Federal agency, or pass-through entity in the case of a sub-recipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503.

The prospective primary participant/sub-awardee/contractor certifies to the best of its knowledge and belief that it and its principals:

DO  expend \$750,000 or more federal awards and are required to comply with audit requirements above. A copy of the report will be submitted.

DO NOT  expend \$750,000 or more federal awards and are NOT required to comply with audit requirements above.

Should prospective primary participant/subawardee/contractor status change during our agreement period we will notify the Department.

\_\_\_\_\_  
Print Name and Title and "Provider" name, Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

RIDER E

NOAA Requirements

The Vendor agrees to comply with the Department of Commerce Financial Assistance Standard Terms and Conditions referenced herein as part of Rider E of this Agreement which can be downloaded as follows:  
[http://www.osec.doc.gov/oam/grants\\_management/policy/documents/Department%20of%20Commerce%20Standard%20Terms%20&%20Conditions%2031%20March%202017.pdf](http://www.osec.doc.gov/oam/grants_management/policy/documents/Department%20of%20Commerce%20Standard%20Terms%20&%20Conditions%2031%20March%202017.pdf)

This agreement includes federal funding CFDA # 11.419 Coastal Zone Management Administration Awards.

The Maine Coastal Program calls your attention to the following NOAA requirements:

PUBLICATIONS AND ACKNOWLEDGEMENT OF SPONSORSHIP

The cover of the title page of all reports, studies, presentations or other documents supported in whole or in part by this award or any sub-award shall acknowledge the financial assistance provided by the Coastal Zone Management Act of 1972, as amended, administered by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

The Vendor is responsible for assuring that all work products developed and distributed in draft or final form including utilizing NOAA funding include the following funding acknowledgement and Maine Coastal Program and NOAA logos:

This [report/video/presentation/internet site] was prepared by the Vendor under award CZM NA18NOS4190097 to the Maine Coastal Program from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the National Oceanic and Atmospheric Administration or the Department of Commerce.

The Vendor is also responsible for assuring that meeting agendas and PowerPoint presentations include an abbreviated funding acknowledgement and Maine Coastal Program and NOAA logos.

GEOSPATIAL DATA

For any CZM award that is providing federal funds for collection or production of geospatial data (e.g. GIS data layers), the Provider will comply to the maximum extent practicable with Executive Order 12906 "Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure" Federal Register Vol. 59, Number 71, pp. 17671 - 17674, the award Provider shall document all new geospatial data it collects or produces using the standard developed by the Federal Geographic Data Committee (FGDC), and make that standardized documentation electronically accessible to OCRM. The standard can be found at <http://www.fgdc.gov/metadata/csdgm>.

All spatial data created shall be maintained by the Vendor in a manner that is easily accessible to the public. A list of the spatial data created during this project and the process by which this data may be accessed (e.g. website) will be included referenced within the body of applicable work product.

RIDER F

Certification Regarding  
Debarment, Suspension and Other Responsibility Matters  
Primary covered Transactions

Vendor Name: \_\_\_\_\_

Date: \_\_\_\_\_

Certification Regarding  
Debarment, Suspension and Other Responsibility Matters  
Primary covered Transactions

This Certification is required by the Regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The Regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE SIGNING THIS CERTIFICATION, PLEASE READ THE ATTACHED INSTRUCTIONS WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b of this Certification; and
  - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
  
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
Name and Title, Authorized Representative

\_\_\_\_\_  
Signature



## STATE OF MAINE | SERVICE CONTRACT

### Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the Certification set out below.
2. The inability of a person to provide the Certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the Certification set out below. The Certification or explanation will be considered in connection with the Maine Coastal Program's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a Certification or an explanation shall disqualify such person from participation in this transaction.
3. The Certification in this clause is material representation of fact upon which reliance was placed when the Maine Coastal Program determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous Certification, in addition to other remedies available to the Federal Government, the Maine Coastal Program may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the Maine Coastal Program if at any time the prospective primary participant learns its Certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Maine Coastal Program for assistance in obtaining a copy of these regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Maine Coastal Program.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions" provided by the Maine Coastal Program, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Lists of Parties Excluded from Procurement or Nonprocurement Programs.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Maine Coastal Program may terminate this transaction for cause of default.

RIDER G

IDENTIFICATION OF COUNTRY

IN WHICH CONTRACTED WORK WILL BE PERFORMED

**Please identify the country in which the services purchased through this contract will be performed:**

- United States. Please identify state: Maine**
- Other. Please identify country: Enter Country**

Notification of Changes to the Information

The Provider agrees to notify the Division of Procurement Services of any changes to the information provided above.

**Business Associate Agreement**

(NA

Other:

NA



March 8, 2019  
19062

Matthew Sturgis, Town Manager  
Town of Cape Elizabeth  
320 Ocean House Road  
P.O. Box 6260  
Cape Elizabeth, Maine 04107

**RE: Kettle Cove Road Boat Launch – Surveying and Engineering Support Services**

Dear Matt:

Sebago Technics, Inc. (Sebago) is pleased to provide this proposal to support the Town of Cape Elizabeth (Town) with survey and engineering services to develop a preliminary plan of a new boat launch facility to replace the current location being used on Kettle Cove Road. This preliminary plan will support coordination with the State of Maine and provide the basis for grant applications and the development of a final construction plans. The relocation of the existing public access to a historical boat launch area along with the necessary steps to repurpose the existing public boat launch area into a pedestrian-only access were key recommendations of the April 30, 2018 Harbors report as prepared by the Cape Elizabeth Harbors Committee.

**Project Understanding**

As quoted directly from the Harbors Committee Report, the Kettle Cove/Crescent Beach area is the one coastline area within Cape Elizabeth that currently needs solutions as it represents an ongoing challenge of varying commercial and recreational uses, State and local jurisdictional boundaries and responsibilities, and often conflicting neighborhood interests. These challenges are compounded by the natural conditions and physical space limitations of the area as well as its overall popularity among its users, particularly during the summer months.

Boat access for the public to the Kettle Cove/Crescent Beach area is limited by the constraints related to the current launch area. This public access is currently located along a narrow gap between two portions of the Crescent Beach landholdings by the State of Maine. It is located to the north of the State's Kettle Cove Parking Lot and is accessed by a gap in the boulders which line the west side of Kettle Cove Road. The relatively steep public use ramp is maintained by the Town and often requires the replacement of gravel caused by the loss of material to wave action due to the ramp's open exposure to the ocean. The launch's proximity to residences across Kettle Cove Road also often creates conflicts with the neighborhood residents when users prolong the unloading of equipment and the launching of recreational watercrafts or use the launch area inappropriately.

In addition, an open drainage course which crosses the beach area to the northwest of the launch site often temporarily erodes a channel which cannot be passed over by most recreational vehicles. This situation creates a very restricted area near the launch site for users and prevents the access to the much wider and protected sections of Crescent Beach to the west.

The Cape Elizabeth Fishermen's Alliance (CEFA) and residents of the Town have proposed a relocation of the existing Town public beach access to a historical boat launching area further to the northwest. The new facility would be accessed off Kettle Cove Road. The Town Council has supported this initiative. The use of the historical boat launch was curtailed many years ago due to improper activities. Access to this area is currently restricted by a series of large boulders placed by the State along the west side of Kettle Cove Road. It is believed that the gravel placed for the original launch area is predominately still in place and is now overgrown with vegetation.

State representatives have indicated that the State would very much support the effort to move the public vehicle beach access. However, any improvements to reuse the past boat launch area would need to be funded by the Town. Further, the improvements would need to be engineered and properly permitted. In order to do so, a comprehensive agreement between the State and the Town would need to be agreed upon that stipulates each party's responsibilities. That agreement would eventually require an easement which would allow the Town to construct and maintain the improvements as well as operate the boat launch.

The Harbors Committee report also recommended that the existing boat launch be repurposed as a pedestrian-only access point to Crescent Beach and vehicular use of the current launch be prohibited. To repurpose this area effectively, the Harbors Committee suggested that the Town should devise means; through stairs, vehicle barriers, and signage, to clearly demonstrate its location and purpose in providing pedestrian access to the beach area. In doing so, the rights of the public to access and enjoy the beach area would be clearly identified and enhanced by providing a safe, year-round means to readily access the beach by foot.

The report concluded that clear separation of uses and proper signage stipulating these uses would resolve much of the conflict within the Kettle Cove/Crescent Beach area. By providing an improved public beach access and launching capabilities, the public users would be more inclined to use the more accessible public area and less apt to use the more restrictive Boat Cove launch area which should be limited to commercial users and the Town's WETeam. Also, by moving the public vehicle beach access area to the northwest, conflicts with the drainage channel would be mitigated. In addition, the new public beach access location would create a buffer between boat launch activities and the nearby residential homes along Kettle Cove Road.

The Harbors Committee report included four recommendations. It is our understanding that the Town would like Sebago's assistance with conducting a planning study and developing a preliminary plan to allow the Town to undertake these recommendations so that the stated objectives can be completed.

1. Enter into an agreement with the Operations and Maintenance Division of the Maine Department of Agriculture, Conservation, and Forestry's Bureau of Parks and Lands stipulating each parties' understandings and responsibilities associated with the relocation of the public vehicle beach access to the historical boat launch area to the northwest off Kettle Cove Road.
2. Follow up with steps to secure an easement from the State of Maine that would allow the Town to construct and maintain the improvements and then operate the new public vehicle beach access site.
3. Investigate and seek grant opportunities that could be used to assist in the funding of the new public access location. The Maine Department of Transportation's Small Harbors Improvements

Projects (SHIP) grants have historically included a 50% local match up to \$250,000 in funding. SHIP grants must improve access to an existing access area. Also, the State provides Shore and Harbor Planning grants which dedicate up to \$30,000 with a local match that could be used to begin the planning work for this new launch.

4. Design, permit, construct, maintain, and operate the new public vehicle beach access area while repurposing the existing beach access area to provide safe pedestrian-only access to Crescent Beach. The pedestrian access should be enhanced with stairs or some other suitable means to allow for safe and secure year-round access to the beach. Further, vehicle barriers should be placed off the edge of Kettle Cove Road to not only restrict vehicular use of the access, but to also demarcate the entrance for pedestrians. Finally, signage should be added to direct visitors to this beach access location for foot traffic.

#### **Project Scope**

Sebago will provide survey and engineering support to develop an Existing Conditions Plan of the project area and develop a preliminary improvement plan for a new boat launch area and a repurposing of the existing launch into a pedestrian access only to the beach areas. Supporting this effort, will be a separate geotechnical subsurface investigation study to be conducted by S.W. Cole Engineering, Inc. (SW Cole). We understand that SW Cole will be providing the Town with a separate proposal to conduct that investigation and provide a report of their findings.

The Existing Conditions Plan will include topography and existing improvements from the State Park property at Kettle Cove Road to an area approximately 50-feet north of the entrance to the proposed boat launch area as shown on the attached Exhibit 1 from the Harbor Committee Report. This survey will include the right of way of Kettle Cove Road as well as the ocean side slopes and areas including the existing and proposed boat launch areas.

Working with the Town Staff, Sebago will also develop a preliminary plan of the new launch and the repurposed pedestrian access at the current public boat launch. This plan will include a layout using software to replicate boat trailer turning movements, proposed grading, and future site improvements based on the SW Cole report recommendations and options to develop pedestrian access and appurtenances.

Sebago will also estimate the quantities of materials that will be necessary to complete the proposed improvements and develop conceptual costs to construct the improvements based on 2019 dollars. It is necessary to note that the volatility of the current contractor bidding climate makes estimates of construction costs very difficult to project and that our estimate will likely need to include a large contingency to adequately address the potential fluctuations that may occur with estimated construction costs for this project.

Sebago will also investigate permitting issues for the local, state, and federal levels and estimate the costs of developing applications and the magnitude of potential application fees. This study will be summarized in a narrative-style report deliverable which will include preliminary plans of the proposed improvements.

With this information, the Town will be able to demonstrate to the State of Maine that the proper process will be followed which will allow the Town to enter a memorandum of understanding with the State and receive easements which would allow the Town to construct and maintain the proposed

improvements. The Town will also be able to use this information to apply for grants to further study and develop the construction documents necessary to construct the proposed improvements. Sebago will provide technical support for these endeavors. We have included two support meeting with the Town Council, State representatives, regulatory agencies, and/or other stakeholders in this stage of the project.

#### **Exclusions and Assumptions**

The following items are excluded from Sebago's scope or to be completed under the following assumptions. Should any of these items be necessary as the project evolves or should any part of this process not be in keeping with our assumptions, we would be pleased to provide the Town with a proposal for the additional/altered services.

1. No engineering technical specifications and plans beyond preliminary engineering design plans.
2. No Local, State, Regional, or Federal regulatory permitting beyond the study level described in the Scope of Services section of this proposal.
3. Participation in four meetings with the Council, regulatory agencies, stakeholders, and/or State representatives will be included.
4. Sebago will provide technical support of grant requests, but the Town or others will prepare grant applications.
5. No preparation of project bidding documents or assistance in the bidding process.
6. No construction layout, inspection, or administrative support.

#### **Compensation**

Sebago will provide professional services as described on an estimated basis inclusive of reimbursable expenses for a budgeted amount of **\$15,250** based on the following breakdown of project tasks.

<b>Kettle Cove Road Boat Launch Improvements – Preliminary Plan</b>	<b>Budget Amount</b>
1. Existing Conditions Plan Survey	1. \$ 3,510.
2. Preliminary Plan Engineering Design	2. \$ 5,240.
3. Construction Cost Estimate Preparation	3. \$ 1,440.
4. Local, State, and Federal Permitting Investigation	4. \$ 980.
5. Narrative Report	5. \$ 1,800.
6. Meetings and Technical Town Support	6. \$ 1,680.
7. Other Direct Costs	7. \$ 600.
<b>Total Estimated Fee</b>	<b>\$ 15,250.</b>

Hourly rates and project costs will follow the Schedule of Hourly Rates and Charges as contained in the most current Engineering Services agreement between the Town and Sebago. You will be invoiced on a monthly basis for services performed during that period.

#### **Schedule**

We understand that the Town would like Sebago and SW Cole to commence with the survey and subsurface investigation once the winter weather has subsided and the frost is no longer in the ground. As such, we would propose that our work would begin in early April. We envision that the plan and

report could then be developed within approximately 60 days once the survey and geotechnical report information was made available. Accordingly, we would anticipate a mid-June to July 1<sup>st</sup> completion.

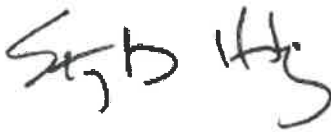
**Terms and Conditions**

The terms and conditions of this project will follow the Terms and Conditions of the most current Engineering Services agreement between the Town and Sebago. Acknowledging acceptance of this proposal in the signature block at the end of this document indicates our mutual agreement of the scope and terms of this proposal and shall serve as Sebago's notice to proceed.

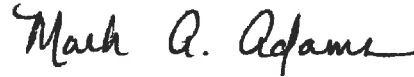
We thank the Town for requesting that Sebago assist them for assistance with this project. Please do not hesitate to contact me directly should there be any questions or comments regarding this proposal for our services.

Sincerely,

SEBAGO TECHNICS, INC.



Stephen D. Harding, P.E.  
Town Engineer



Mark A. Adams, Sebago Technics  
President/CEO

Enclosure: Exhibit 1 – Kettle Cove/Crescent Beach Access Plan

cc: Bob Malley, Cape Elizabeth Public Works Director

SDH/MAA:jg

**ACCEPTED and AUTHORIZED**  
(Sebago Technics' Project No. 19062)

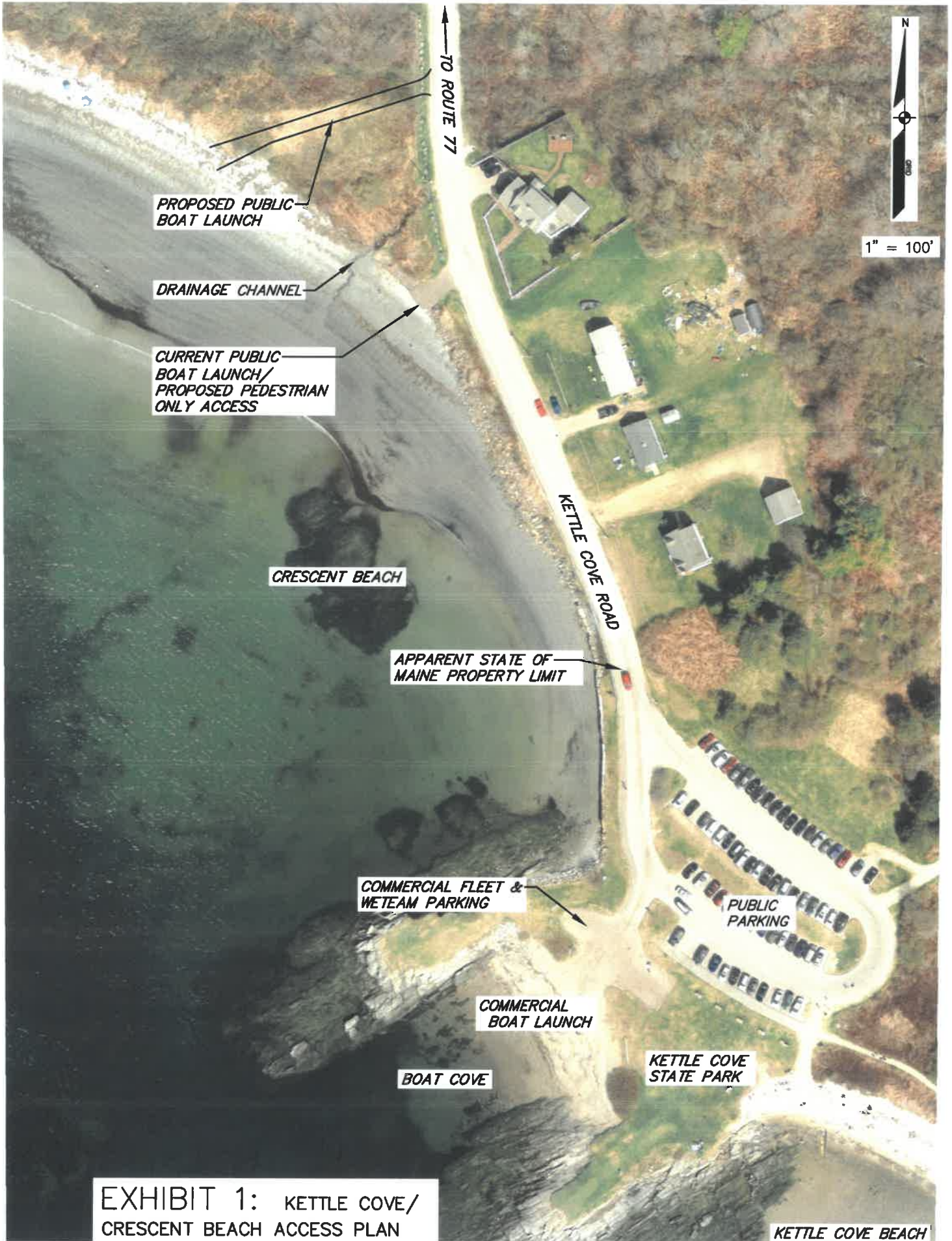
By: \_\_\_\_\_

Representing: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





**EXHIBIT 1: KETTLE COVE/  
CRESCENT BEACH ACCESS PLAN**

**KETTLE COVE BEACH**