



State AMS No.: _____

MaineDOT CSN: _____

TEDOC No.: _____

Local Project Agreement
Between the
Maine Department of Transportation
And the
Town of Falmouth

U.S. Route 1 Resurfacing: Federal Project AC-STP-1909(600)X; State WIN 19096.00

This Agreement for the above-referenced Project is made by and between the Maine Department of Transportation (“the **MaineDOT**,”) an agency of Maine State Government with its headquarters in Augusta, Maine, and a mailing address of 16 State House Station, Augusta, ME 04333-0016; and the Town of Falmouth (“the **Town**,”) a municipal corporation and body politic with its principal administrative offices at 271 Falmouth Road, Falmouth, Maine 04105.

WHEREAS, the Project described herein was selected for inclusion in the MaineDOT 2012-2013 Biennial Capital Work Plan by the Portland Area Comprehensive Transportation System (“**PACTS**,”) the designated Metropolitan Planning Organization for the Portland Urbanized Area, located at 68 Marginal Way in Portland, Maine; and

WHEREAS, this Agreement sets out the terms and conditions of the funding for the Project, as programmed by **PACTS** and approved by the **MaineDOT**.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

- A. **Project**: The work to resurface a portion of U.S. Route 1 in Falmouth, Maine, starting at state Route 88 and continuing northerly 1.1 miles to Bucknam Road (“the **Project**.”) The work shall be performed by or for the **Town** and accepted by the **MaineDOT**.
- B. **Project Coordinator**: The person designated by the **Town** to administer the Project and oversee all local responsibilities.
- C. **MaineDOT Project Manager**: The person designated by the **MaineDOT** to oversee all State responsibilities. This person shall serve in a review and advisory role to ensure that the Town meets all Project requirements.

ARTICLE II. PROJECT DEVELOPMENT

- A. **FUNDING**. Total approved funding for the Project is Seven Hundred Seventeen Thousand Six Hundred Eighty Dollars (**\$717,680**), and such costs shall be shared by the **MaineDOT** and the **Town** at the rates shown in Article III.A-B. Project costs eligible for Federal/State funding shall not exceed this amount without written approval from **PACTS** and the **MaineDOT**.

- B. **AUTHORIZATIONS.** The **Town** must receive authorization from the **MaineDOT** before performing work or procuring services. Any local costs incurred beforehand shall be ineligible for reimbursement and further shall not be credited toward the Town's match.
1. Additionally, the **Town** neither shall alter the terms of this Agreement nor change the scope or objectives of the Project without written approval from the **MaineDOT**, in communication with **PACTS**, through a fully executed Modification to this Agreement.
- C. **BUDGET AND SCHEDULE.** Upon receiving "Notice to Proceed" from the MaineDOT, the **Town's** Project Coordinator shall review with the **MaineDOT** Project Manager and the **PACTS** staff the scope of work, budget, schedule, and requirements for the Project. Within sixty (60) days of receiving said 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 Project 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. **CONSULTANT SERVICES.** The **Town** may hire an engineering consultant, 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 factor in the scoring process.
 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 non-construction work performed by any consultant.
- E. **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 the MaineDOT's *Highway Design Guide, Standard Specifications, and Standard Details*. All such documents shall be submitted to the **MaineDOT** for review and approval before the **Town** requests authorization to advertise the Project for construction.
- F. **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.
- G. **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**.
- H. **ENVIRONMENTAL PROCESS.** The **Town** or its consultant shall prepare and submit to the **MaineDOT** for review all required environmental studies and reports. The **MaineDOT** shall submit to the Federal Highway Administration all documentation required under the *National Environmental Policy Act*.

- I. PUBLIC PARTICIPATION. The **Town** shall provide for public participation as necessary to meet Federal/State requirements. The **Town** shall notify the **MaineDOT** Project Manager and **PACTS** staff of all public meetings.
- J. FORCE ACCOUNT. If the **Town** intends to construct the Project with its municipal work force, the **Town** first shall obtain written approval from the **MaineDOT**. If authorized to use a “Force Account” process, the **Town** shall comply with all Federal regulations governing such work – 23 CFR, Parts 635.201 to 635.205.
- K. ADVERTISE AND AWARD. If a contractor is hired through competitive bidding, the **Town** shall obtain authorization from the **MaineDOT** *before* advertising the Project for construction. Upon receiving such authorization, the **Town** shall follow the process outlined below:
1. Bids shall be solicited 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.
- L. 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 construction 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. If applicable, 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**.

M. 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.

ARTICLE III. COST-SHARING & REIMBURSEMENT

- A. PRELIMINARY ENGINEERING COSTS. The *estimated* cost of preliminary engineering (PE) work is Twenty-Nine Thousand Six Hundred Four Dollars (**\$29,604**), and the **MaineDOT** and the **Town** agree to share such costs as follows:
1. The **MaineDOT** – using Federal and State funding programmed by PACTS – shall be responsible for eighty percent (**80%**) of federally eligible PE costs, or *approximately* Twenty-Three Thousand Six Hundred Eighty-Three Dollars and Twenty Cents (**\$23,683.20**, or **80% of \$29,604**.) For purposes of audit, the Federal share shall be seventy percent (70%) of such costs, and the State share shall be ten percent (10%).
 2. The **Town** shall be responsible for twenty percent (**20%**) of federally eligible PE costs, or *approximately* Five Thousand Nine Hundred Twenty Dollars and Eighty Cents (**\$5,920.80**, or **20% of \$29,604**.)
- B. CONSTRUCTION COSTS. The *estimated* cost of construction (CON) and construction engineering (CE) work is Six Hundred Eighty-Eight Thousand Seventy-Six Dollars (**\$688,076**), and the **MaineDOT** and the **Town** agree to share such costs as follows:
1. The **MaineDOT** – using Federal and State funds programmed by PACTS – shall be responsible for ninety percent (**90%**) of federally eligible CON and CE costs, or *approximately* Six Hundred Nineteen Thousand Two Hundred Sixty-Eight Dollars and Forty Cents (**\$619,268.40**, or **90% of \$688,076**.) For purposes of audit, the Federal share shall be eighty percent (80%) of such costs, and the State share shall be ten percent (10%).
 2. The **Town** shall be responsible for ten percent (**10%**) of federally eligible CON and CE costs, or *approximately* Sixty-Eight Thousand Eight Hundred Seven Dollars and Sixty Cents (**\$68,807.60**, or **10% of \$688,076**.)
- C. OTHER LOCAL RESPONSIBILITIES. The **Town** shall be fully responsible for any costs deemed ineligible for Federal/State funding and all costs exceeding Seven Hundred Seventeen Thousand Six Hundred Eighty Dollars (**\$717,680**), unless otherwise approved in writing by **PACTS** and the **MaineDOT**.
- D. 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, but are not limited to: preliminary engineering, survey, environmental support, right-of-way support, final design reviews, and construction engineering. The **Town**'s share of such costs shall be reconciled and deducted from any reimbursement due at final invoice both for the PE and CON/CE stages of the Project.

- E. **REIMBURSEMENT.** The **MaineDOT** shall reimburse the **Town** for the Federal and State shares of eligible costs actually incurred – at the percentages described in sections A and B above for the PE and CON/CE stages of the Project – 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 19096.00.
 - 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.
- F. The **MaineDOT** shall recover from the **Town** any Project-related payment for any action or activity that subsequently is deemed ineligible for Federal/State funding. The **MaineDOT** shall have the additional remedy of withholding Project-related reimbursements to the **Town**.
- G. 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.
- H. Once the **MaineDOT** has paid the **Town**’s final claim for reimbursement or otherwise closed out the Project, any remaining Federal and State funds shall go back to **FACTS**.

ARTICLE IV. NON-APPROPRIATION

- 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 **Town** – if any of the following occurs:
1. The **MaineDOT** and/or **FACTS** do not receive adequate funds to support the Project; or
 2. Funds otherwise programmed for the Project are de-appropriated; or
 3. The **MaineDOT** does not receive the authority to expend funds programmed for the Project from the Maine State Legislature or Maine courts.

ARTICLE V. TERMINATION AND DEFAULT

- 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 work performed under this Agreement by any consultant or contractor;
 5. Breach of any material provision 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**, with copies of such notice to **PACTS**.
1. Upon receiving notification, the **Town** and all consultants and contractors covered by this Agreement 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 Project funds previously reimbursed. Once the Project has been closed, any remaining Federal and State funds shall go back to **PACTS**.

ARTICLE VI. RECORDS RETENTION, ACCESS & AUDIT

- 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 the provisions of 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" (GAGAS).

ARTICLE VII. GENERAL PROVISIONS

- A. Laws and regulations. All activities conducted pursuant to this Agreement shall comply with applicable laws and regulations, including but not limited to the following: Title 23 in the United States Code (USC) for statutory law and Title 23 in the U.S. 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. Equal Employment Opportunity (EEO). The **Town** shall comply with applicable EEO requirements:
1. The **Town** and its consultant(s) shall not discriminate against any employee or applicant for employment *regarding work under this Agreement* because of race, color, religious creed, sex, national origin, ancestry, age or physical handicap unless related to a bona fide occupational qualification. The **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, sex, national origin, ancestry, age or physical handicap during any period of employment under this Agreement. Such action shall include, but not be limited to: 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 prominently in places readily available to all employees and applicants for such employment notices setting forth the provisions of this paragraph.
 2. In all solicitations for employees placed by or for the **Town** for work undertaken pursuant to this Agreement, the **Town** shall state that all qualified applicants shall be considered regardless of race, color, religious creed, sex, national origin, ancestry, age or physical handicap.

3. All of the foregoing equal employment opportunity provisions shall be included in any contract for services or work under this Agreement so that the provisions are binding upon each consultant – except for any contract for the purchase or supply of standard commercial supplies or raw materials.
 4. 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.
- F. 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.
- G. 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

All provisions of this Agreement – except for Article VI.A (records retention) 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

- 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 committing 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 **Town Council** of Falmouth, 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 municipal 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 *Appendix A*. This Agreement shall be considered incomplete without said signed document.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date last signed.

Town of Falmouth

Maine Department of Transportation

By: _____
Nathan Poore, Town Manager

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

Date: _____

Date: _____

Note: An additional municipal signature is required on Appendix A, on the next page ↗



State AMS No.: _____

MaineDOT CSN: _____

TEDOC No.: _____

APPENDIX A TO A LOCAL PROJECT AGREEMENT:

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

The **Town of Falmouth, Maine** 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, an authorized representative from 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:

Sign and Print Legal CCR Name

DUNS[®] Number ⁽¹⁾

⁽¹⁾ The DUNS[®] Number is a unique nine-digit identification assigned and maintained solely by Dun & Bradstreet (D&B). DUNS[®] Number assignment is free for all businesses required to register with the US Federal government for contracts or grants. The Data Universal Numbering System or DUNS[®] Number is D&B’s copyrighted, proprietary means of identifying business entities.