

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“Agreement”) is entered into by and between THE MAINE PORT AUTHORITY, a body both corporate and politic in the State of Maine, (“MePA”), and the MAINE DEPARTMENT OF TRANSPORTATION (“MaineDOT”), an agency of state government with its principal administrative offices located on Child Street, Augusta, Maine (MePA and MaineDOT are collectively the “Parties”)

RECITALS:

A. Port Infrastructure Development Program (PIDP) is a discretionary grant program administered by the Maritime Administration. Funds for the PIDP are awarded on a competitive basis to projects that improve the safety, efficiency, or reliability of the movement of goods into, out of, around, or within a port.

B. MaineDOT and the MePA have been involved in the development of a \$39,560,000 joint application for funding assistance to PIDP. The application contains projects in Maine’s three deep-water ports.

C. MaineDOT and MePA have past experience delivering federal grants and state funded construction projects and typically partner on capital projects for funding and project management.

D. The MePA Board, after deliberation and vote at a public meeting on Feb. 13, 2023, authorized the Executive Director to work with the MaineDOT to apply for PIDP funding utilizing Jacobs Engineering Group to assist in creating a competitive application.

Now therefore, the Parties agree as follows:

1. **MaineDOT is the application lead applicant and MePA is co-applicant.** MePA Executive Director will be the primary contact for the project.
2. **Should the application be successful, MaineDOT will be the grantee and responsible for financial administration of the grant.** MePA will work cooperatively with MaineDOT to support oversight of grant activities.
3. **MaineDOT is responsible for project management.** MePA will support project management efforts from MaineDOT and both entities will work together to successfully deliver all projects in the scope of work.
4. **MaineDOT and MePA will be responsible for design, engineering, permitting, and NEPA compliance.** MePA is under contract for design of the Portland refrigerated container expansion, and MaineDOT has contracts for design for Searsport Offshore Wind and the Eastport Breakwater and Fish Pier projects. MaineDOT will also oversee the Portland Dredge project.

5. **Non-Appropriation.** Notwithstanding any other provision of this Agreement, if either Party does not receive sufficient funds to fund this Agreement and its other obligations, or if either Party does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then that Party is not obligated to expend funds as required under this Agreement.

6. **Non-Indemnification and Non-Waiver.** Neither MePA nor MaineDOT is obligated to indemnify the other. Nothing in this Agreement shall waive any defense, immunity, or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. § 8101 *et seq.*) or any other privileges or immunities provided by law. This provision shall survive any termination or expiration of this Agreement.

7. **Remedies.** Any disagreements between MaineDOT and MePA relating to this Agreement will be addressed directly between the Commissioner of MaineDOT and the Board of Directors of MePA at MePA's next Board meeting.

8. **Additional terms.** At all times, this Agreement shall be governed by and construed in accordance with the laws of the State of Maine. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns. This Agreement may be signed in counterparts, with all counterparts together constituting one original instrument. Signatures below may be applied and/or saved electronically, and such electronic signatures will be given the same effect as a paper document signed in ink.

The Parties hereto have executed this Agreement to be effective as of the date last executed below.

Maine Port Authority



Matthew Burns, Executive Director
Duly authorized

Date: 4/26/23

Maine Department of Transportation



Nathan E. Moulton, Director
Office of Freight and Business Logistics
Duly authorized

Date: 4/26/23