**MAINE DEPARTMENT OF TRANSPORTATION**

**Federal Boating Infrastructure Grant Program Agreement**

With

Regarding

**(Payable)**

 ***(MaineDOT Use Only)***

Total Agreement Amount: $      MaineDOT WIN:

Federal Share: $      Federal Award Number:

Matching Share: $      Vendor ID:

Agreement Begin Date:       DUNS Number:

Agreement End Date:       CFDA Number: 15.622

This Agreement for a federally funded project is entered into by the State of Maine Department of Transportation (**MaineDOT**) with its headquarters at 24 Child Street in Augusta, Maine, and       (**Grantee**) with its principal offices located at       in      , Maine, which jointly shall be referred to as the **Parties**.

**RECITALS**

* + - 1. Congress passed the Sport Fishing and Boating Safety Act of 1998 (50 CFR, Part 86) to improve facilities for recreational transient boats longer than 26 feet. Under the Act, the U.S. Fish and Wildlife Service (Wildlife Service) conducts the Boating Infrastructure Grant (BIG) Program; and
			2. The State of Maine Department of Inland Fisheries and Wildlife, which is designated to receive and administer BIG funds, delegated the authority to administer the BIG Program to MaineDOT through an interagency agreement dated February 27, 2001; and
			3. In Federal Fiscal Year 20     , the Grantee applied for and was awarded Tier       federal funding through the BIG Program for       (the **Project**).

**AGREEMENT**

**NOW, THEREFORE,** in consideration of the foregoing statements, the Parties agree as follows:

**APPENDICES**

The following appendices shall be incorporated into this Agreement:

[x]  Appendix A: Interagency Agreement dated February 27, 2001; and

[x]  Appendix B: BIG Application and Award Notice.

**ROLES AND RESPONSIBILITIES**

1. ROLE OF GRANTEE. The Grantee shall lead the development of the Project and shall assign an employee with decision-making authority to carry out the Grantee’s responsibilities. This Project Coordinator shall be responsible for the Project at all times.
* Project Coordinator for Grantee:

 Email:

 Phone:

1. ROLE OF MAINEDOT. MaineDOT will provide oversight by designating a Project Manager with the authority to approve and reject reimbursement requests; require revisions to plans and specifications; inspect, reject and stop work; and take all other action to ensure proper performance of this Agreement.
* Project Manager for MaineDOT:

 Email:      @maine.gov

 Phone: 207-

**FINANCIAL OBLIGATIONS**

* + - 1. AUTHORIZATION. Federal financial participation in pre-award costs shall begin after completion of the steps set out below. Federal financial participation in construction shall not begin until the Wildlife Service issues a Notice of Grant Award and obligates federal funds. To start federal participation in pre-award costs:
1. The Wildlife Service must authorize pre-award costs, if applicable; and
2. MaineDOT must execute this Agreement; and
3. MaineDOT must issue the Grantee a Notice to Proceed with pre-award work.
4. PROJECT COST. The estimated cost of the Project is $      (Project Cost), which the Parties shall share as shown below.
	1. FEDERAL SHARE. MaineDOT, using federal funding from the BIG Program, will share in the Project Cost up to a maximum of either       percent or $     , whichever is less.
	2. GRANTEE’S SHARE. The Grantee’s share of the Project Cost is       percent, or $     . The Grantee shall not use federal funds of any type as match for this Project. Additionally, the Grantee shall be fully responsible for:
		1. All costs exceeding the estimated Project Cost, unless otherwise agreed upon by the Parties through an executed modification to this Agreement; and
		2. All costs that MaineDOT determines to be ineligible for reimbursement; and
		3. All pre-award costs incurred without written federal approval.
	3. If the actual cost of the Project is less than the estimated Project Cost, the final amounts owed will be adjusted based on the percentages above.
5. REIMBURSEMENT. The Grantee shall submit invoices to MaineDOT requesting reimbursement of the federal share of costs incurred on the Project in accordance with the following conditions:
6. MaineDOT will make no payment to the Grantee until the Wildlife Service has issued the official Notice of Grant Award for the Project and obligated federal funding.
7. Upon obligation of federal funding, the Grantee shall submit invoices no more than monthly and no less than quarterly.
8. Each invoice shall document the charges incurred and proof of payment made.
9. Each invoice shall include a progress report for the service period of the invoice.
10. Each invoice shall show MaineDOT’s and the Grantee’s portions of costs incurred for the service period, including a running total of costs incurred to date.
11. The Grantee shall certify that amounts are correct and not claimed previously.
12. Payment of the Grantee’s final invoice shall be contingent upon a passing inspection of the completed Project by MaineDOT or its designee.
13. TERM. The Grantee must fulfill the requirements for the Wildlife Service to approve the BIG Award and obligate federal funds within 3 federal fiscal years from the start of the award year. Once the Wildlife Service obligates federal funds, the Grantee must complete the Project within the performance period in the Notice of Grant Award. The Grantee must submit any request for an extension in writing to the Wildlife Service before the end of the original period of performance.
14. REPAYMENT. If the Grantee withdraws from the Project, leading to cancellation of the Project, the Grantee shall refund all reimbursement payments from MaineDOT toward the Project.
15. STATE OF MAINE’S RIGHTS OF SET-OFF. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but shall not be limited to, the State of Maine’s option to withhold for the purposes of set-off money due the Grantee under a specific project contract up to any amounts due and owed to MaineDOT regarding this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing before the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason – including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT 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 MaineDOT, its representatives, or the State Controller.
16. APPROPRIATION OF FUNDS. The Grantee acknowledges and agrees that, although the execution of this Agreement manifests MaineDOT’s intent to honor its terms and to seek funding to fulfill MaineDOT’s obligations arising hereunder, such obligations by law are subject to available budgetary appropriations by the U.S. Federal Government. This Agreement creates no obligation on behalf of MaineDOT that exceeds such appropriations.

**PROJECT DEVELOPMENT**

1. KICKOFF. Upon receiving Notice to Proceed, the Grantee shall hold a Project Kickoff with MaineDOT to go over the scope of work, budget, schedule, and legal requirements for the Project.
2. PROGRESS REPORTS. The Grantee shall provide MaineDOT with regular, written progress updates at a frequency agreed to by the Parties. If the Grantee does not provide such regular updates and fails to respond to repeated requests to do so, MaineDOT may hold the Municipality in default, as defined in the “Default and Termination” section of this Agreement.
	* + 1. CONSULTANT WORK. The Grantee may hire a consultant assist with design and permitting work on the Project. If the Grantee intends to seek reimbursement for consultant costs, the Grantee shall use a qualifications-based selection method with written approval from MaineDOT.
			2. USEFUL LIFE. For purposes of this Agreement, Useful Life is defined as the period during which a capital improvement can fulfill its intended public purpose with adequate routine care and maintenance, as described in 50 CFR §86.74. In its BIG application, attached to this Agreement as Appendix B, the Grantee estimated the Useful Life of the facility as       years.
			3. DESIGN. The Grantee, in coordination with its contracted consultant, shall prepare all design plans, specifications and cost estimates (PS&E) for the Project in accordance with generally accepted marine industry standards and MaineDOT’s procedures, as applicable and shown below:
3. Tie-up facilities shall be designed to last for the term of Useful Life, as defined above.
4. The Grantee shall provide MaineDOT with the final PS&E package for review, comment and acceptance. The MaineDOT Project Manager may require revisions to ensure that the PS&E package meets all applicable laws, regulations, construction standards and specifications.
	* + 1. PERMITS. The Grantee shall document to the satisfaction of the Wildlife Service its compliance with applicable federal laws, regulations and policies – including the National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, and applicable executive orders. Additionally, the Grantee shall provide MaineDOT with a signed certification in the format of *Communication 12* stating either that it has obtained all required permits for the Project or that no permits were required for the Project.
			2. UTILITIES. The Grantee shall coordinate the Project with utilities that may be affected by the work. The Grantee shall submit a utility certification to MaineDOT with the PS&E package for the Project, in the format of *Communication 13*.
			3. RIGHT OF WAY. The Grantee shall provide the MaineDOT with a certification that it either holds title to the property upon which the Project will be constructed or has obtained rights – through easements, licenses or leases – from the owners of all property necessary for the Project. This certification shall be in the format of *Communication 14*. The Grantee’s right/title/interest in the property shall remain with the Grantee for the term of the facility’s Useful Life, as defined above.
			4. DEED RESTRICTION. The Grantee shall file a Notice of Grant Agreement with the county Registry of Deeds to record the federal interest in the property affected by the Project as a condition of receiving the federal Grant Award. This notice shall stipulate that the Grantee shall not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site or facilities, for the Useful Life of the BIG funded facility without permission and instructions from the Wildlife Service. The MaineDOT Project Manager will assist the Grantee with the necessary language if the Wildlife Service applies this condition to the Grant Award.
			5. BIDDING. Once the Wildlife Service has issued Notice of Grant Award and obligated federal funds, the Grantee may advertise for construction bids with written authorization from MaineDOT. The Grantee shall conduct the bidding process in accordance with Section 102 of MaineDOT’s Standard Specifications (November 2014) “Bidding”. MaineDOT may not reimburse the Grantee for work advertised without such authorization.
			6. CONTRACT AWARD. Upon MaineDOT’s written approval, the Grantee shall award a contract for the Project in accordance with Section 103 of MaineDOT’s Standard Specifications (November 2014) “Award and Contracting”. *Negotiating with any bidder before awarding a contract will cause the Grantee to lose federal funding for the Project.*
			7. CONSTRUCTION. Following contract award, the Grantee shall arrange a pre-construction meeting with written notice of at least five (5) working days. The meeting shall involve MaineDOT, the contractor and all other parties involved in or affected by the work. During construction, the Grantee shall provide oversight sufficient to ensure compliance with the plans and specifications for the Project. MaineDOT personnel shall have access to the Project site upon request to monitor compliance with this Agreement.
			8. CONTRACT MODIFICATIONS. The Grantee shall submit proposed modifications to the construction contract to MaineDOT for review and concurrence before executing such documents. MaineDOT may not participate financially in any modification executed without prior review.
			9. INSPECTION. MaineDOT or its designee will inspect the completed Project for compliance with the design plans, specifications and provisions of the construction contract. MaineDOT reserves the right to deny reimbursement to the Grantee for the cost of any work that is out of compliance.

**OPERATION AND MAINTENANCE**

* 1. PUBLIC USE. As a condition of receiving federal funding, the Grantee upon completing the Project shall allow reasonable access to facilities constructed, operated or maintained with BIG funds to all eligible vessels for the term of Useful Life, as follows:
1. Such facilities shall be located where recreational boaters reasonably can reach and use them;
2. The Grantee shall open the facilities during reasonable time periods;
3. The Grantee may charge a reasonable tie-up fee, based on the prevailing rate in the area;
4. The Grantee shall provide boaters using the tie-up facilities access to the shore and to basic amenities such as fuel, water, electricity, restrooms, and pump-outs where available.
	1. OPERATION. The Grantee shall operate completed BIG-funded facilities and assume all costs associated with such operation for the term of Useful Life, as follows:
5. The Grantee shall provide surveillance and security at the facility as necessary to suppress vandalism and to protect persons and property.
6. The Grantee shall operate and maintain tie-up facilities for the purposes stated in the Grantee’s approved BIG application. Transient vessels may use designated BIG slips for up to 15 days. All slips receiving BIG funds must display signs denoting this purpose.
7. The Grantee shall not convert to another use any facility paid for with BIG support without written permission from the Wildlife Service for the term of the facility’s Useful Life.
	1. SIGNS. Upon completion of the Project, the Grantee shall use the Sport Fish Restoration logo to show the source of BIG funding in accordance, with 50 CFR Part 86, Subpart F, §86.75.
	2. MAINTENANCE. The Grantee shall be responsible for all maintenance and repairs to the Project for the term of its Useful Life, as defined above.
8. Materials and labor. The Grantee shall provide all labor, materials, equipment, machinery, tools, supplies and supervision necessary to perform such maintenance work.
9. Tie-Up Facility. The Grantee shall maintain and repair any tie-up facility or structure for the Useful Life of the facility, as defined above.
10. Dredging. The Grantee shall perform maintenance dredging if necessary to allow safe passage for vessels that require a water depth of at least 6 feet at the lowest tide. (See 50 CFR, Part 86, Subpart F, §86.13).
	1. ***All provisions of this Operations and Maintenance section shall survive the termination or expiration of this Agreement***.

**RECORDS AND AUDITS**

1. PUBLIC RECORDS. The Grantee shall treat all documents prepared by or for the Grantee for the Project – *except for proprietary information* – as public records. “Proprietary information” shall apply to trade secrets or information that is commercial or financial in nature, the disclosure of which would impair the competitive position of the Grantee and make available information otherwise not in the public domain.
2. PROJECT RECORDS. Project Records, whether printed or electronic, shall consist of all plans, specifications, contracts, reports, notes, or other documents prepared by or for the Grantee (Project Records). The Grantee shall retain all Project Records for at least **3 years** from the date of MaineDOT’s acceptance of the final invoice for the Project or the termination of this Agreement, whichever is sooner. If any litigation, claim, negotiation or audit has begun before the end of this retention period, all Project Records shall be kept at least until all related issues are resolved.
3. ACCESS. The Grantee and any contracted party working on its behalf shall allow representatives from the State of Maine to inspect and audit Project Records. Copies of such records shall be furnished at no cost to the agencies and/or representatives requesting them.
4. AUDITS. Project audits shall comply with generally accepted government auditing standards.
5. ***This “Records and Audits” section shall survive termination or expiration of this Agreement.***

**MISCELLANEOUS PROVISIONS**

1. GOVERNING LAW. The Parties agree that the laws of the State of Maine shall govern this Agreement. The Parties further agree that all activities performed with the BIG Grant Award shall be done in accordance with Title 50 in the U.S. Code of Federal Regulations, Part 86, “Boating Infrastructure Grant Program”.
2. CONFIDENTIALITY. The Grantee shall protect the confidentiality of the estimated construction cost until a contract is awarded for the Project, as required by Maine law (23 M.R.S. §63).
3. INDEPENDENT CAPACITY. The Grantee, its employees, agents, representatives, consultants or contractors *shall not* act as officers, employees or agents of MaineDOT.
4. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, the Grantee agrees as follows:
5. The Grantee shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to an actual occupational qualification. The Grantee shall take affirmative action to assure 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. The Grantee agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this section.
6. The Grantee shall state – in all solicitations or advertising for employees placed by or on behalf of the Grantee relating to this Agreement – 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.
7. The Grantee shall cause the foregoing provisions to be inserted in any contract for any work covered by this Agreement so that such provisions shall be binding upon each contractor, provided the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
8. FLOW DOWN. Contracts between the Grantee and all consultants, contractors and other third parties shall contain or incorporate by reference applicable provisions of this Agreement.
9. BINDING EFFECT. The Parties shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.
10. NO ASSIGNMENT. The Grantee shall not assign its rights or obligations under this Agreement to any other party without specific written consent from MaineDOT.
11. ENTIRE AGREEMENT. This document represents the entire Agreement between the Parties. Neither MaineDOT nor the Grantee shall be bound by any statement, correspondence, agreement or representation that is not expressly contained in this Agreement.

**INDEMNIFICATION AND INSURANCE**

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

**THIRD-PARTY CERTIFICATION**

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

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

**DEBARMENT**

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

**DEFAULT AND TERMINATION**

1. DEFAULT. MaineDOT will send the Grantee a written Notice of Default for any of the following:
2. Failing to complete the Project by the end of the performance period stipulated in the federal Notice of Grant Award without a written extension from the Wildlife Service;
3. Failing to respond to repeated requests for progress updates from MaineDOT;
4. Withdrawing from the Project, resulting in cancellation of the Project;
5. Taking any action that renders the Project ineligible for federal funding;
6. Using Project funds for a purpose not authorized by this Agreement;
7. Misrepresenting or falsifying any claim for reimbursement;
8. Failing to meet the standards of performance outlined in this Agreement.
9. TERMINATION. MaineDOT will have just cause to terminate this Agreement in the event of default by the Grantee, as defined above. MaineDOT will give the Grantee a cure period of 14 calendar days, effective on the Grantee’s receipt of Notice of Default. If the Grantee fails to address all defaults within this cure period or any longer period as MaineDOT may authorize, MaineDOT may terminate this Agreement for cause, with these conditions:
10. MaineDOT will recover from the Grantee all reimbursements made for work on the terminated Project; and
11. The Grantee shall forfeit all federal funds remaining in the terminated Project.

**AGREEMENT APPROVAL**

The undersigned representative of the Grantee assures that the Granteehas approved entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized its representative to sign this Agreement.

The Parties have executed this Agreement effective on the date last signed below.

**Maine Department of Transportation**

By: By:

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

 Bureau of Project Development

Date: Date:

***\* I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my control.***

**APPENDIX A**





**APPENDIX B**