Order 177-16/17
Passage: 9-0 on 3/27/2017 Effective 4/6/2017

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING AGREEMENT BETWEEN PORTLAND AND MAINE DEPARTMENT OF TRANSPORTATION RE: BAYSIDE TRAIL AND EASTERN PROMENADE INTERSECTION IMPROVEMENTS

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for design and construction of the Bayside Trail and Eastern Promenade Intersection Improvements is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

MaineDOT

MaineDOT use only
AMS ID: _____
CSN: _____
TEDOCS #: _____

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federal-aid Locally Administered Project
With the
City of Portland
Regarding
Intersection of Bayside Trail and Eastern Promenade Trail: WIN 018886.00

Total Agreement Amount: $152,300	Federal Project #: TAP-1888(600)
Federal Share: $121,840 (80%)	Federal Award Date: March 5, 2015
Municipal Share: $30,460 (20%)	Portland Vendor ID: VC1000073476
Effective Date: _____	Portland DUNS® #: 07-174-7802
Expiration Date: _____	CFDA #20.205: Highway Planning & Construction

This Agreement for a federal-aid project to improve the intersection of the Bayside Trail and the Eastern Promenade Trail in Portland, Maine ("the **Project**") is between the Maine Department of Transportation, an agency of the State of Maine with headquarters at 24 Child Street in Augusta, Maine ("**MaineDOT**") and the City of Portland, a body corporate and politic with its primary offices at 389 Congress Street in Portland, Maine ("the **City**").

This Agreement contains the following attachments:
- ☒ Federal Funding Accountability and Transparency Act Form (signature required);
- ☒ Federal Title VI Assurances (signature required).

WHEREAS, the **City** performed preliminary engineering work on the **Project** under a separate agreement: CTM20130711000000000045 / CSN 31851; and

WHEREAS, the **City** shall deliver the **Project** as a Locally Administered Project, subject to **MaineDOT** oversight to ensure that all federal requirements are met.

NOW, in consideration of the previous statements, **MaineDOT** and the **City** ("the **Parties**") establish and agree to the following terms and conditions:

ARTICLE 1. ROLES AND RESPONSIBLITIES

1A. ROLE OF CITY. The **City** shall assign a full-time qualified employee with current Local Project Administration ("LPA") certification from **MaineDOT** to manage the **Project** and carry out its responsibilities under this Agreement. This Local Project Administrator shall abide by the guidance in the latest edition of **MaineDOT**'s *Local Project Administration Manual & Reference Guide* ("LPA Manual.") If the certified administrator leaves the **City** or ceases to oversee the **Project**, the **City** shall stop work and notify the **MaineDOT** Project Manager. **MaineDOT** will evaluate the situation and determine a course of action.

❑ The following employee of the **City** shall serve as Local Project Administrator:
Name: Bruce Hyman, Transportation Program Manager
Phone: (207) 874-8717
Email: bhyman@portlandmaine.gov

1B. ROLE OF MAINEDOT. **MaineDOT** will assign a Project Manager to the **Project** to carry out the State of Maine's responsibilities under this Agreement. This person or a designee will have the authority to request design changes to meet applicable laws and design standards; accept and reject invoices; review construction activities to ensure compliance with contract documents; and take all other action needed to ensure proper performance of this Agreement.

❑ **MaineDOT** has assigned the following individual to serve as Project Manager:
Name: John Rodrigue
Email Address: john.rodrigue@maine.gov
Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

2A. UPSET LIMIT. The estimated total cost of the **Project** is **$152,300** (the "Upset Limit.") **Project** costs eligible for federal participation shall not exceed this Upset Limit without **MaineDOT**'s written approval, through an executed modification to this Agreement.

2B. FEDERAL SHARE. **MaineDOT**, with funding from the Federal Highway Administration ("the FHWA"), will share in all **Project** costs eligible for such federal participation at the rate of **80%**, up to a maximum contribution at this rate of **$121,840.**

2C. LOCAL SHARE. The **City,** with funding other than from the U.S. Department of Transportation, shall share in all **Project** costs eligible for federal participation at the rate of **20%**, or an estimated $**30,460**. The **City** shall be fully responsible for all expenditures:

1. Exceeding the Upset limit of this Agreement set forth in Article 2A above;
2. Incurred before the date of notice to proceed, as set forth in Article 3B, "Authorization";
3. Deemed ineligible for federal financial participation.

2D. MAINEDOT COSTS. Costs that **MaineDOT** incurs for work on the **Project** shall be paid for out of the **Project**. The **City** shall share in these costs at the rate in Article 2C, "Local Share." **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the City's share from the final invoice payment.

2E. REIMBURSEMENT. **MaineDOT** will reimburse the **City** for federally eligible costs incurred on the **Project** at the rate in Article 2B, "Federal Share." The **City** shall bill **MaineDOT** no more than monthly and no less than quarterly, subject to these conditions:

1. The **City** shall prepare Invoices on letterhead and in the format provided in Communication 4 of the LPA Manual**.**
2. The **City** shall provide with each invoice documentation of charges incurred and proof of payment, with sufficient detail to satisfy the **MaineDOT** Project Manager.
3. Each invoice shall include a progress report for the service period of the invoice.
4. Each invoice shall show **MaineDOT**'s and the **City**'s portion of **Project** costs, including a running total of costs incurred to date.
5. The **City** must certify that amounts claimed are correct and not claimed previously.
6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.

2F. FINAL COST. If the final cost of the **Project** is less than the Upset Limit in Article 2A, reimbursement to the **City** will be capped at the percentage of actual costs in Article 2B, "Federal Share." The **City** shall refund any overpayment to **MaineDOT**.

2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to termination of this Agreement for cause, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** fully for costs incurred for work in the **Project.**

2H. SET-OFF. **MaineDOT** will have the option to exercise its common law, equitable and statutory rights of set-off to recover payment made to the **City** for work later deemed ineligible for federal funding. These rights will include, but will not be limited to, **MaineDOT**'s option to withhold money owed to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract starting before the effective date of this Agreement.

ARTICLE 3. PROJECT DEVELOPMENT

3A. SCOPE OF WORK. This Agreement shall apply to a **Project** consisting of final design, construction and construction engineering work for improvements to the intersection of the Bayside Trail and the Eastern Promenade Trail. Any substantial change shall require **MaineDOT**'s written approval to be eligible for financial assistance from **MaineDOT**.

3A. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting any reimbursable work on the **Project** under this Agreement.

3B. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with regular progress reports at intervals established by **MaineDOT**'s Project Manager.

3C. CONSULTANT SERVICES. If the **City** intends to contract for consultant services under this Agreement, the **City** shall:

1. Use a qualifications-based selection method and <u>not</u> the lowest price. Using price as a selection factor will render consultant work on the **Project** <u>ineligible</u> for federal funding.
2. Obtain the **MaineDOT** Project Manager's written approval before awarding a contract.
3. Incorporate "Consultant General Conditions for Local Public Agencies" into contracts.
4. Obtain **MaineDOT**'s written approval before modifying a contract. Work that is performed on a consultant contract outside of the original scope of work without an approved and executed modification in place shall be <u>ineligible</u> for reimbursement.
5. Evaluate the performance of its consultant upon completion of the contract in accordance Section 2.10 of the LPA Manual, "Consultant Evaluations."

3D. DESIGN WORK. Design plans, specifications, estimates and contract documents for the **Project** shall be developed in accordance with **MaineDOT**'s *Engineering Instructions*, *Highway Design Guide*, *Standard Specifications* and *Standard Details*, as applicable.

1. The **City** shall submit the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and acceptance.

2. The **City** shall address to **MaineDOT**'s satisfaction all changes requested or concerns expressed before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising for bids or proceeding to the construction stage without **MaineDOT's** written authorization shall render the entire **Project** *ineligible* for federal funding.

3. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record, whether a **Municipal** employee or consultant, of responsibility for the quality of the engineering documents for the **Project**.

3E. ENVIRONMENTAL REVIEW. The National Environmental Policy Act ("NEPA") process was completed under WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.

3F. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project.** The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format shown in Communication 12 of the LPA Manual, as part of the final PS&E package for the **Project.**

3G. UTILITIES. The **City** shall coordinate the **Project** with any utility and railroad that may be affected**.** The **City** shall provide **MaineDOT** with a utility certification in the format shown in Communication 13 of the LPA Manual, as part of the final PS&E package. MaineDOT's Utility Accommodation Rules (2014) shall apply to required utility relocations.

3H. RIGHT OF WAY. Acquisition of rights-of-way is not necessary for the **Project.**

3I. SOLICITATION OF BIDS. Upon written authorization from **MaineDOT**, the **City** shall advertise for competitive bids, as follows:

1. The **City** shall follow the procedures in MaineDOT's Standard Specifications (November 2014 Edition), Section 102, "Bidding."
2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain MaineDOT's written approval before awarding a contract.
3. The **City** shall ensure that the **Project** contract book contains the following documents:
   a. Davis-Bacon prevailing wage rates;
   b. Form FHWA 1273 (Appendix A to Division 100: Section 1, Bidding Provisions); and
   c. Signed Title VI Assurances.

3J. CONTRACT AWARD. Upon receiving **MaineDOT**'s written approval, the **City** shall award a contract for the **Project** to the lowest responsive and responsible bidder in accordance with MaineDOT's *Standard Specifications* (November 2014 Edition), Section 103, "Award and Contracting." The **City** shall administer the contract for the duration of the **Project**.

3K. CONSTRUCTION. During construction of the **Project**, the **City** shall:

1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method.
2. Hold a pre-construction / pre-utility meeting with **MaineDOT**, the contractor, utilities and any other parties involved in the construction work before any work begins.

3. Coordinate materials testing necessary to meet the Minimum Testing Requirements that **MaineDOT** established for the **Project**.

4. Submit contract modifications to **MaineDOT** for review and comment before they are executed. ***MaineDOT*** *reserves the right not to reimburse the* ***City*** *for work under a contract modification executed without* ***MaineDOT's*** *review and approval.*

5. If applicable, provide **MaineDOT** with a set of revised as-built plans within 90 days of completion of construction.

3L. MAINEDOT OVERSIGHT. **MaineDOT** will inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.

3M. MAINTENANCE. The **City** shall maintain the completed **Project** year-round for its standard useful life or 20 years, whichever is longer. Maintenance work shall consist of upkeep and repairs needed to maintain a firm, stable and slip-resistant surface, including snow removal. Maintenance shall not be delegated to any other party without specific, written approval from **MaineDOT**, which shall be attached to this Agreement.

ARTICLE 4 – TERMINATION

4A. FOR CAUSE. **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 4B. **MaineDOT** will afford the **City** a cure period of fourteen (14) calendar days, effective on the **City**'s receipt of Notice of Default. If the **City** fails to address all defaults within this cure period, **MaineDOT** may terminate this Agreement for cause, with these conditions:

1. **MaineDOT** shall recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.

2. **MaineDOT** shall be held harmless against any claim of breach of contract filed against the **City** by any third party in accordance with Article 6B, "Indemnification."

3. The **City** shall forfeit all federal funds remaining in the terminated **Project**.

4B. DEFAULT. **MaineDOT** shall send the **City** a Notice of Default if the **City:**

1. Withdraws its support for the **Project**; or

2. Takes any action that renders the **Project** ineligible for federal-aid funding; or

3. Uses **Project** funds for a purpose not authorized by this Agreement; or

4. Misrepresents or falsifies of any claim for reimbursement; or

5. Fails to meet standards of performance outlined in this Agreement.

4C. FOR CONVENIENCE. The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

1. In case of Termination for Convenience, **MaineDOT** will reimburse the **City** for federally eligible work performed under this Agreement until the effective termination date. The **City**'s share of **MaineDOT**'s costs for work on the **Project** shall be deducted from the final invoice amount owed to the **City**.

2. **MaineDOT** will reprogram for other purposes all federal funds remaining in the **Project**.

ARTICLE 5 – RECORDS & AUDIT

5A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **5 years** from the date either of **MaineDOT**'s acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this **5-year** period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.

5B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records at reasonable times. Copies shall be furnished at no cost to the Federal Government or to the State of Maine.

5C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 6. GENERAL PROVISIONS

6A. GOVERNING LAW. The laws of the State of Maine shall govern this Agreement. Additionally, the **Parties** shall comply with all federal regulations that apply to the **Project**, including but not limited to 23 CFR, "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

6B. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of Title 23 of the Maine Revised Statues Annotated (MRSA), Section 63: "Confidentiality of Records."

6C. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, 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. *Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive the termination or expiration of this Agreement.*

6D. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.

6E. EQUAL EMPLOYMENT OPPORTUNITY. The **City** and all consultants and contractors hired pursuant to this Agreement shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability unless related to a bona fide occupational qualification. The **City** and all consultants and contractors hired pursuant to this Agreement shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability during any period of employment under this Agreement.

6F. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.

6G. 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.

6H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 7. DEBARMENT

7A. By signing this Agreement, the **City** 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 this transaction by the Federal Government. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or its principals is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government.

7B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the Federal Government.

ARTICLE 8. CONFLICT OF INTEREST

8A. The **City** agrees that no person or entity with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.

8B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City.** No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and in behalf of the **City**.

8C. The **City** agrees that no person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to the **City** before the person or entity enters into the contract.

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT**'s payment of the final invoice from the **City** for the **Project** or **three (3) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

1. Article 3N, "Maintenance," shall be enforced for at least twenty (20) years.
2. Article 5, "Records & Audit," shall remain in place until all activity pursuant to this provision is completed.
3. Article 6B, "Confidentiality," shall remain in effect until negated by law.
4. Article 6C, "Indemnification," shall remain in place until specifically terminated by the **Parties** or negated by law.

ARTICLE 10. AGREEMENT APPROVAL

The undersigned municipal representative assures that the **City**'s legislative body has approved the **City**'s entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

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

City of Portland	**Maine Department of Transportation**
By: _____	By: _____
Jon Jennings, City Manager	**William A. Pulver, 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 LPA Manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my control.

Federal Funding Accountability and Transparency Act

The **City of Portland, Maine** and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

If the Federal portion of the **Project** exceeds $25,000, an authorized representative from the **City** shall sign this document under (B) below and return it with the **Project** Agreement. Additionally, the **City** shall provide the following information, *if applicable*:

A) The total compensation and names of the top five officers if:

- More than 80% of the **City**'s annual gross revenues are from the U.S. 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 Central Contractor Registration (CCR):

City of Portland, Maine 07-174-7802

Sign and Print Legal CCR Name DUNS® Number

Authorized Representative: _____

Jon Jennings, City Manager

U.S. Department of Transportation (U.S. DOT)

Federal Highway Administration – Standard Title VI / Nondiscrimination Assurances

DOT Order No. 1050.2A

The **City of Portland, Maine** (the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (U.S. DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The City of Portland, Maine, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or Agreement subject to the Acts and the Regulations.

4. If applicable, the Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. If applicable, the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
    a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
    a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
    b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in it programs. The person signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

DATED _____

By _____
Jon Jennings, City Manager
City of Portland, Maine

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**,, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 et seq.).

PLANT LIST

KEY	QTY	BOTANICAL NAME	COMMON NAME	PROP. SIZE
		TREES		
BP	7	BETULA PAPYRIFERA 'RENAISSANCE REFLECTION'	RENAISSANCE REFLECTION PAPER BIRCH	2" CAL.
		SHRUBS		
JC	15	JUNIPERUS COMMUNIS 'BLUEBERRY DELIGHT'	BLUEBERRY DELIGHT COMMON JUNIPER	#3 CONT.
MP	4	MYRICA PENSYLVANICA	NORTHERN BAYBERRY	2–3' HT.
		PERENNIALS		
AN	9	ASTER NOVAE–ANGLIAE 'VIBRANT DOME'	VIBRANT DOME NEW ENGLAND ASTER	2 GAL. MIN.
EP	15	ECHINACEA PURPUREA 'MAGNUS'	CONEFLOWER	2 GAL. MIN.
PA	17	PEROVSKIA ATRIPLICIFOLIA	RUSSIAN SAGE	2 GAL. MIN.
MD	6	MONARDA DIDYMA 'GARDENVIEW SCARLET'	BEE–BALM	2 GAL. MIN.
NF	13	NEPETA FAASSENII 'WALKER'S LOW'	CATMINT	2 GAL. MIN.
RF	21	RUDBECKIA FULGIDA 'GOLDSTURM'	BLACK–EYED SUSAN	2 GAL. MIN.
PV	14	PANICUM VIRGATUM 'SHENANDOAH'	SWITCH GRASS	2 GAL. MIN.

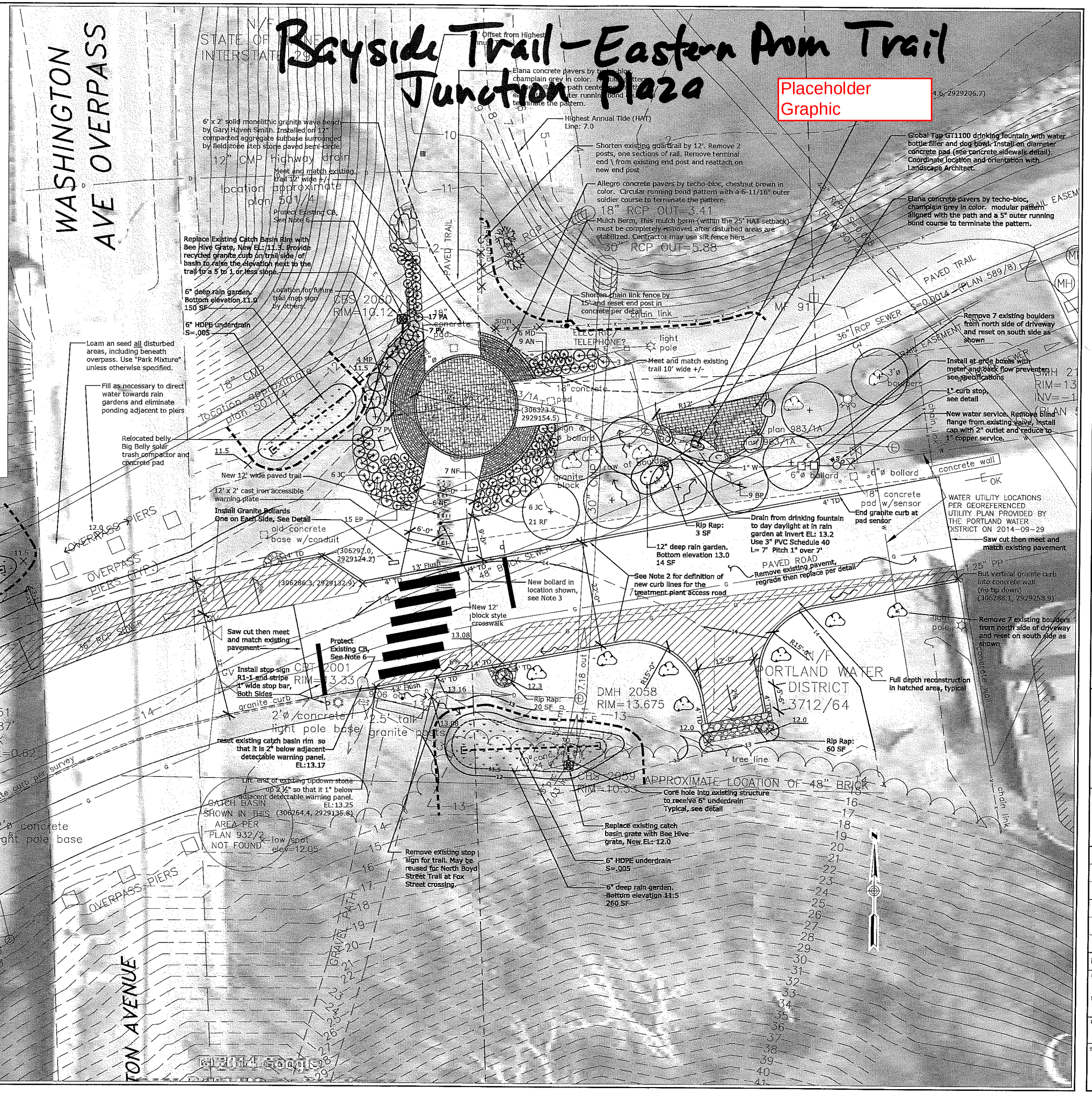
GENERAL NOTE ON DRAINAGE DESIGN AND UPCOMING STORAGE CONDUIT PROJECT

Because the alignment of the proposed sewer storage conduit was unknown at the time of design, disturbance caused by the installation of this conduit could not be considered in the drainage design. The goals of the drainage design are (1) to maximize the areas that drain to the rain gardens while minimizing areas that drain directly to catch basins and (2) to reduce excavation and full depth reconstruction costs by maintaining existing grades to the greatest degree practicable. That said, the disturbance caused by installing the storage conduit may provide opportunities to direct additional runoff towards the rain gardens. Please consider the following

1. There is an existing drainage issue at the south landing of the Bayside Trail, which the proposed grades attempt to address.
2. If the Treatment Plant Access road needs to be fully reconstructed then it may make sense to
   - 2.1 Eliminate the curb cut between the Bayside Trail landing and the hammerhead turnaround and direct their runoff to the hammerhead turnaround
   - 2.2 Crown the segment of the Treatment Plant Access Drive adjacent to the proposed parallel parking so that more areas is directed to the rain gardens.
   - 2.3 If the Treatment Plant Access Drive is crowned between the crosswalk and the access gate then it may make sense to direct runoff from the North side of the rain garden proposed adjacent to the Eastern Promenade Trail. This would require a curb cut and likely an expansion of this rain garden.

CONSTRUCTION NOTES

1. See sheet C-101 for General Notes.
2. The proposed curb line on the south side of the Treatment Plant Access Road, between the crosswalk and the gate to the treatment plant is defined by a straight line between the the end of the existing tip down for the Bayside Trail landing and the end of the concrete wall at the access gate. Coordinates for these points are labeled on the plan notes.
3. Bollards shall be GP4MB48 by Parking Zone
   http://www.parkingzone.com/48-x-4-diameter-gorilla-post-magnetic-base-bollards.html
   Bollards shall be solid yellow in color with white reflective stripes. Use Gorilla Post Asphalt Base Plate and install per manufacturers instructions. Bollard connects to base plate using magnets.
4. Coordinates are provided are provided based on Maine State Plane West coordinate system(drawing units) (Northing, Easting)
5. See detail for proposed mulch berm. The berm is intended to filter runoff from exposed soils before it enters catch basins or rain garden soils. It is critical to protect the rain garden soils as they are very sensitive to clogging from sediment. After all areas are stabilized, mulch berms shall be knocked down and left in place to compost unless otherwise noted.
6. Contractor shall protect existing catch basin from sedimentation with silt sack, hay bales, stone check dams and/or other Maine DEP approved BMP.



Project:

Bayside Trail Improvements

Portland, Maine

Prepared for:

The City of Portland
Portland, Maine 04101

STATE OF MAINE — John I. Mahoney #12340 — LICENSED PROFESSIONAL ENGINEER

LICENSED LANDSCAPE ARCHITECT — Keith B. Smith No. 2509 — STATE OF MAINE

SCALE 1" = 10'

10 0 5 10

tjd&a

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Trails Junction Plan

No.	Revision/Issue	Date
E		
E		
D		
C		
B	90% Plan Review	04.13.15
A	PDR plan	06.25.14

Design by: KBS	Checked by: JIM
Drawn by: JIM	Approved by: SJB
Project: 131.061165	

Sheet No: C-102

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