

**CONTRACT ZONING AGREEMENT: Town of Trenton and Maine Department of
Transportation** [DFT#6 AMENDED-5.12.09]

This is a Contract Zoning Agreement made this _____ day of _____, 2009 by and between the Inhabitants of the Town of Trenton, a municipal corporate body, located in the County of Hancock, State of Maine, (hereinafter "the Town" or "municipality") and Maine Department of Transportation, State of Maine, Augusta, Maine (hereinafter "MaineDOT"). This Agreement is Pursuant to Contract Zoning Article VI, of the Trenton Land Use Ordinance, amended July 10, 2007 (contract zoning) pursuant to Title 30-A, Section 4352(8), Maine Revised Statutes Annotated; the Ordinance was most recently amended October 28, 2008.

WHEREAS, MaineDOT purchased a parcel of real estate located along Route 3, Trenton, Hancock County, Maine, consisting of approximately 152 acres and described in deed from Friends of Acadia, Inc., to Maine Department of Transportation recorded with the Hancock County Registry of Deeds in Book 4913, Page 232 ("the Property"); and

WHEREAS, the Property is located along the westerly side of Route 3 in an undeveloped and open area with high visibility and easy access by the volume of daily Route 3 traffic traveling toward Mount Desert Island for work purposes and the volume of seasonal Route 3 traffic traveling toward Mount Desert Island and Acadia National Park ("ANP") for recreational purposes; and

WHEREAS, MaineDOT desires to develop the Property as the Acadia Gateway Center at Crippens Creek ("Acadia Gateway Center" or "Project") and has proposed such development of the Project in four Phases with immediate development of Phase I to be followed closely by Phase II of the Project. Phases III and IV are then to follow in sequence. Phase I is an access road, bus maintenance facility for Downeast Transportation/Island Explorer, and park-and-ride lot. Phase II is a multi-modal transportation center, busway, ANP sales and information and parking. Phase III is the National Park Service Welcome Center for ANP with projected completion by 2012. Phase IV is an addition of theaters to the Welcome Center as well as an area for possible retail, concessions, and community use. Both Phases I and II, planned for immediate development, are integral parts of the overall proposed Acadia Gateway Center with a mix of uses. Most of the land areas planned for Phases I and II are located in the Rural Development District. Some of the land areas planned for Phases III and IV are located in the Rural Development District and some in the Rural Commercial District. Some proposed land uses within Phases I, II, III, and IV are not permitted in either the Rural Development District or the Rural Commercial District; and

WHEREAS, more particularly, the main portion of the Property proposed for development as Phase I (the bus maintenance facility for Downeast Transportation/Island Explorer and the park-and-ride lot) is located in the Rural Development District and the portion of Phase II proposed for the multi-modal transportation center also appears to be partially located in the Rural Development District. Under the Trenton Land Use Ordinance ("Ordinance") such transportation facilities are neither permitted nor conditionally permitted uses within the Rural Development District. Other portions of the Property nearer Route 3 are within the Rural Commercial District which permits some proposed land uses and does not permit other proposed land uses in the Project; and

WHEREAS, MaineDOT has requested a re-zoning of the part of the Property's Rural Development District and Rural Commercial District proposed for development to allow development of proposed transportation facilities in Phases I and II of the Project and all other proposed land uses not currently permitted. MaineDOT requested such re-zoning within the context of and as an integral part of the entire Project in its Contract Zoning Application and detailed plans and specifications submitted to the Trenton Planning Board in February 2009 ("MaineDOT Application"). The MaineDOT Application for the Acadia Gateway Center specified the closely connected and interrelated nature of all four Phases of the Project with an outline and explanation of the Project in the cover letter for the MaineDOT Application to the Chair of Trenton Planning Board dated February 25, 2009. This cover letter is a part of the MaineDOT Application and a copy of the letter is annexed hereto and incorporated herein as **Attachment 1**; and

WHEREAS, the proposed Acadia Gateway Center Project for the Property with all four Phases as proposed in the MaineDOT Application will offer Maine residents and visitors significant facilities and activities not otherwise available in Trenton; and

WHEREAS, such re-zoning to permit development of the Project with all four Phases is consistent with the goals of the Trenton Comprehensive Plan as outlined in MaineDOT's cover letter as a part of the MaineDOT Application (Attachment 1); and

WHEREAS, the Trenton Planning Board and Trenton Board of Selectmen, pursuant to Contract Zoning Article VI of the Trenton Land Use Ordinance and 30-A MRSA & 4352(8) ("Contract Zoning Requirements"), after notice, lengthy discussion, and due analysis and deliberation of the Project and the Contract Zoning Requirements by each board, each has recommended the re-zoning of the Property as requested in the MaineDOT Application to allow development of the Project with all four Phases; and

WHEREAS, the Inhabitants of the Town of Trenton, by Town Meeting vote, has determined that the re-zoning is pursuant to and consistent with the Town's Comprehensive Plan and has authorized the Trenton Board of Selectmen to execute this Contract Zoning Agreement as the means of documenting the Agreement of the parties and of accomplishing the MaineDOT requested re-zoning to allow full development of the Project on the Property. This Town Meeting vote occurred on _____, 2009.

NOW THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

A. Land Use Considerations.

1. Map

The Town will amend the Zoning Map of the Town of Trenton, as amended and on file at the Trenton Municipal offices and incorporated by reference in the Land Use Ordinance by adopting the map change amendments shown on **Attachment 2**.

2. Primary Use

The Contract Zoning change for this Property is granted and conditioned on the primary

use of the Property as the Acadia Gateway Center, complete with the initiation of the building permit application for the transportation facilities of Phase I shortly after the execution of this agreement by the parties and the initiation of the building permit application for the transportation facilities of Phase II shortly after approval of the currently proposed work plan of MaineDOT by the Maine Legislature and the securing of funding therefor, and to be followed with building permit applications for the additional facilities of Phases III and IV. All Phases of the Project shall be in accord with the Contract Zoning Application and detailed plans and specifications for the Project submitted by MaineDOT to the Trenton Planning Board in February 2009 and in accord with future, final governmental permits when issued to authorize the beginning of construction of the Project. The transportation facilities of Phases I and II must be operated as integral elements of the overall Acadia Gateway Center as the primary use for the Contract to remain valid.

3. **Permitted Uses in the Re-zoned Area within the Rural Development District**

MaineDOT is authorized to construct a facility to be known as the Acadia Gateway Center at the Property, to be constructed as Phases I-IV, in compliance with the MaineDOT Application, as approved, and consisting of the following uses in the re-zoned area, but subject to MaineDOT obtaining final municipal building permits and other required governmental authorizations for each Phase of the Project:

- (1) The approved Acadia Gateway Center as the overall primary use.
- (2) Bus maintenance and garage facilities with access road for operation under lease to Downeast Transportation/Island Explorer or other bus service provider(s) to provide public bus transportation to at least the Ellsworth/Trenton/Mt. Desert Island area (“bus service” or “bus service provider”) along with a park-and-ride lot to provide parking for bus service users and other commuters.
- (3) Intermodal transportation center with offices for management and dispatch of the bus service provider and public access facilities and areas for bus service users and other commuters.
- (4) Parking facilities for the bus service provider staff and bus service users and other commuters.
- (5) Accessory uses directly related to the above uses; examples include, without limitation, public areas, structures for picnics, and other similar activities or for pet rest and exercise.
- (6) The land areas for Phase III and Phase IV appear to be within the Rural Commercial District zone. The main land use categories for Phases III (the National Park Service Welcome Center for ANP) and Phase IV (addition of theaters to the Welcome Center as well as an area for possible retail, concessions, and community use) appear to be included as conditional uses within the Rural Commercial District. To the extent, however, that any part of Phase III or Phase IV of the Project is within the Rural Development District or within the Rural Commercial District, and the specific land use proposed in the MaineDOT Application is not permitted within the applicable district, then such use as

proposed in the MaineDOT Application is approved and authorized as part of this Contract Zoning Agreement.

4. **Prohibited Uses**

Uses and facilities not consistent with the uses and facilities authorized herein are prohibited unless authorized as a permitted or conditionally permitted use in the existing applicable zoning district.

5. **Project Access and Egress** Access to and egress from the Acadia Gateway Center shall be directly from and to Route 3 as specified in the MaineDOT Application.

6. **Solid Waste Disposal:** MaineDOT shall be responsible for all solid waste collection, recycling, and disposal for any and all Phases of the Project at no cost to the Town of Trenton. The current plan for payment of all disposal fees is through direct billing of ANP by the disposal site owner as is reflected in the letters attached as **Attachment 3**.

7. **Subsurface Wastewater Disposal System and Sludge Disposal:** MaineDOT shall be responsible for all wastewater disposal for the Project, on-site or otherwise, as authorized by municipal or other governmental permit for each Phase of Project development at no cost to the Town of Trenton for any aspect of the wastewater disposal system including without limitation disposal system construction, maintenance, repair, or sludge disposal.

8. **Other Land Use Issues:** All other land use issues and site standards and conditions for implementation of the Project as may be required by law shall be determined by the Trenton Planning Board as part of its review and approval of subsequent MaineDOT permit applications for specific authorization to build each portion of the Project.

9. **Zone Limitation**

This is the sole zoning for the portion of the Property within the Rural Development District and the Rural Commercial District, except as otherwise set forth in the restrictions, provisions and conditions within this Agreement, all other requirements of the underlying Rural Development District or Rural Commercial District shall apply.

The restrictions, provisions and conditions within this Agreement are essential parts of this re-zoning, shall run with the Property and any part thereof, shall bind MaineDOT, its successors and assigns and shall be for the benefit of and be enforceable by the Town of Trenton.

If Phases I and II of the Project are not substantially completed within five years of the effective date of this Agreement and MaineDOT is not actively pursuing good faith efforts to complete the Project, the re-zoning authorized herein shall be voidable by court order unless, in the court's judgment, the overall circumstances of the Project can be shown to make an enforceable order of specific performance, which may be requested of the court by either party, the most appropriate remedy.

B. Other Conditions and Restrictions Not Specifically Tied to Land Use Requirements

The below conditions and restrictions are essential parts of the re-zoning voted by the Inhabitants of the Town of Trenton, shall run with the property as appropriate, shall bind

MaineDOT, its successors-in-interest and assigns including without limitation its agents and Tenants of the property or any part thereof, and shall inure to the benefit of and be enforceable by the Town of Trenton:

1. **Promote Use of Route 3:** As is implicitly recognized in the Project for Acadia Gateway Center, the parties recognize that the main route for vehicle traffic passing through Trenton going to or from Mount Desert Island for work or recreation is Route 3. A key objective of the Project is to promote such use of Route 3 for traffic destined for Mount Desert Island and to provide an attractive bus facility within the Project to divert a substantial portion of the privately owned vehicle drivers and passengers onto public transportation. The parties, therefore, agree to actively promote this objective of the Project and to undertake reasonable, prudent, and appropriate measures to that end including, but not limited to, maintaining the primary Project entrances and exits directly from and to Route 3.
2. **Route 3 as a Federal Scenic Byway or Maine Scenic Byway:** Trenton now has a pending application with the MaineDOT and US Department of Transportation (“USDOT”) for “Federal Scenic Byway” designation by the USDOT of Route 3 from the Ellsworth-Trenton line southerly to the Trenton-Bar Harbor. The parties do not know what effect signatures on this Agreement and moving forward with the Project will have on USDOT and its eventual decision on the pending application. While the application and decision are pending, MaineDOT agrees to use best efforts to encourage such Federal designation. MaineDOT further agrees, as a backup to a possible long delay in the Federal decision or disapproval of the application, to undertake all preparations necessary to designate this section of Route 3 as a “State of Maine Scenic Byway”. If no Federal decision establishing this section of Route 3 as a Federal Scenic Byway is received by MaineDOT and the Town on or before January 1, 2010, or at anytime earlier, the Town may submit an application for the designation of this section of Route 3 as a “State of Maine Scenic Byway” and MaineDOT shall then proceed to complete the designation process and to make a good faith effort to assist the Town in receiving the designation of this section of Route 3 as a “State of Maine Scenic Byway”.
3. **Assistance for Trenton as Home of Acadia Gateway Center for Acadia National Park:** As the Project moves forward, MaineDOT agrees to use its best efforts to encourage its planned tenants, Downeast Transportation and Acadia National Park, to work with the Town of Trenton to plan for and implement further projects to help the Town assume its new role as the home of the Acadia Gateway Center for Acadia National Park.

C. Local Participation and General Provisions:

1. Local Participation:

(1) **Local Participation in Acadia National Park Information Center:** The parties recognize the importance of the Trenton Chamber of Commerce cooperation on and assistance in the Town acceptance of the Project. MaineDOT and the Town agree to use the best efforts of each to promote the continuation of the more than 25 years of partnership between Acadia National Park and the MDI Regional Chamber of Commerce, of which the Trenton Chamber of Commerce is a member, in providing visitor information at the existing ANP Visitors’ Centers. MaineDOT agrees to promote such continuing partnership in its own policies and memoranda to the appropriate extent and to use its best efforts to encourage Acadia National Park, as a tenant of MaineDOT in the Acadia Gateway Center, to continue

such partnership, including the involvement of Trenton Chamber of Commerce, in the new National Park Service Welcome Center for ANP within the Acadia Gateway Center.

(2) Participation in Phase IV Planning for Retail & Concessions: MaineDOT also agrees to use its best efforts to encourage Acadia National Park, as a tenant of MaineDOT in the Acadia Gateway Center, to involve the Trenton Chamber of Commerce as a local participant and stakeholder in planning and implementing retail and concession activities in the Project (now planned for Phase IV).

(3) Community Use of Specific Facilities: Local public use of planned theaters, other public facilities, and the Property's undeveloped land areas as trails or other passive recreational uses has been a continuing theme in the planning and public presentation of the Project. MaineDOT further agrees to use its best efforts, either on its own or through its tenants, to plan for, facilitate, and manage such community and public use of the Property and Project.

2. General Provisions: This agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument. The Agreement may not be changed or terminated orally.

IN WITNESS WHEREOF, the parties, by their duly authorized officials, hereto have set their hands and seals, in multiple originals with effective date as the date at the beginning of this Agreement.

Witness:

Maine Department of Transportation

_____ By: _____ Date: _____
Name: _____
Title: _____

Inhabitants of the Town of Trenton by its Selectmen

_____ Date: _____
Name: _____, Selectman

_____ Date: _____
Name: _____, Selectman

_____ Date: _____
Name: _____, Selectman

Acknowledgement & Notarization for Maine Department of Transportation signature
Acknowledgement & Notarization for Trenton Selectmen signatures.