

Order 241-20/21
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Effective 5/27/2021

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ACCEPTING AND APPROPRIATING A \$3,000 GRANT
FROM CONNECTMAINE AUTHORITY**

ORDERED, that a grant in the amount of \$3,000 from ConnectMaine Authority is hereby accepted and that amount appropriated for the work of the Portland Broadband Planning Committee in at least the communities of Peaks Island, Great Diamond Island and Little Diamond Island; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute the Grant Agreement in substantially the form attached hereto and whatever other documents are necessary to effect the intent and purpose of this order.

CONNECTMAINE

Planning Grants Contract

Contact Staff

Connect.ME@maine.gov

207.624.9894

Authority Members

Nick Battista, Chair

Jasmine Bishop

Fred Brittain

Susan Corbett

Heather Johnson

Jeff Letourneau

Liz Wyman

The ConnectMaine Authority (“ConnectMaine”) provides planning grants to develop plans for expanding the availability of broadband service. Phase I projects are intended to begin the process of building community-wide support for expanding broadband service; Phase II projects are intended to take the community to the next step in planning for expanded broadband service.

City of Portland (“applicant”) submitted an application to conduct Phase I activities in the affected communities specified below and produce a Community Broadband Plan (“project”) under the Community Broadband Planning Grants program, which was accepted and awarded by ConnectMaine.

The applicant and ConnectMaine are entering into this agreement (“agreement”) to provide grant funds and initiate the project.

I. Information

The applicant shall provide ConnectMaine with a completed W-9 Form prior to receiving grant funds, which are considered reportable income requiring the appropriate 1099 Form. ConnectMaine can make available the W-9 and 1099 Forms as needed.

A. Applicant Information

Company or Affiliation: City of Portland
Name, Title: Dena Libner, Chief of Staff
Address: 289 Congress St, Portland, ME 04101
Phone: 207.756.8288
Email: dlibner@portlandmaine.gov

B. Project Information

Project Title: Portland Islands Broadband Plan
Grant Amount, not to exceed: \$6,000
Start Date: 1.6.2021
End Date: 2.5.2022

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II. Affidavit

By signing this agreement, the applicant attests and certifies that:

1. all project work will be conducted and completed in accordance with the ConnectMaine Authority Rule, Ch. 101, and 35-A M.R.S.A. Ch. 93, and other state statutes, as relevant;
2. funds awarded pursuant to this agreement will be used for expenses that result in completion of the project;
3. the project will be completed within one year of initial payment of grant funds, unless an extension due to unforeseen circumstances is granted by ConnectMaine; and
4. no contribution to this project is provided by an entity that proposes to build, operate or provide retail services using broadband infrastructure constructed pursuant to the project.

III. Project

The applicant shall conduct or cause to be conducted activities and work necessary for the completion of the project in the affected communities, as listed in Attachment A. Completion of this project results in a Community Broadband Plan that includes all the elements required by and 35-A M.R.S.A. Ch. 93, §9217:

- a description of local broadband needs and goals;
- an inventory of the existing infrastructure assets;
- a gap analysis defining the additional broadband infrastructure necessary to meet identified needs and goals;
- an assessment of relevant municipal procedures, policies, rules and ordinances that have the effect of delaying or increasing the cost of broadband infrastructure deployment; and
- a strategy to promote digital inclusion that addresses affordable internet service and equipment, digital literacy and public computer access.

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V. Payment

ConnectMaine may make an initial, partial payment of the awarded grant funds upon approval of a commencement notice submitted by the applicant.

In order to receive full payment of grant funds:

1. the project must be completed within one year of initial payment of grant funds, or within one year of an extension being granted as set forth in Section II;
2. the applicant must submit required reports described in Section V., including all expenses, to ConnectMaine; and
3. ConnectMaine must find that the project complies with 35-A M.R.S.A. Ch. 93, §9217 as set forth in Section III.

ConnectMaine will make full payment of an amount not to exceed the Grant Amount set forth in Section I. for actual expenses incurred to complete the project within 30 days of approval of the completion report.

The applicant is ineligible for any expenses incurred after the required completion date. If the project is incomplete or fails to comply with 35-A M.R.S.A. Ch. 93, §9217, ConnectMaine will not be liable or responsible for any further payment.

VI. Reports

Before ConnectMaine releases initial award funds, the applicant shall submit, within 30 days of the grant award, a notice of commencement to ConnectMaine, which shall include:

1. a description of the project timeline with milestones expected,
2. the project commencement date, and
3. the anticipated completion date.

The applicant may submit a request for extension within 30 days of the grant award if the project hasn't started or within one year of the initial payment of grant funds if the project has commenced, which shall include:

1. the unforeseen circumstances and reason for the extension request;
2. any changes in the project milestones proposed;
3. the project commencement date; and
4. the original completion date, and the anticipated completion date.

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Within one year of initial payment of grant funds, or within one year of ConnectMaine approving an extension, the applicant must submit a completion report to ConnectMaine summarizing the project, which shall include:

1. a summary of the progress made on community broadband planning;
2. certification that the project was conducted and completed as proposed in Section III, and reaffirmation of the attestation in Section II;
3. a breakdown of actual and final expenses incurred on the project, and copies of all invoices, receipts, detailed ledgers and other supporting documentation for expenses covered by awarded grant funds;
4. the completion date;
5. a file copy of the Community Broadband Plan or Broadband Feasibility Study, and the applicant understands this will be made publicly available on the ConnectMaine website;
6. files of the GIS data behind any map of unserved areas included in the Plan or Study; and
7. additional information as required by ConnectMaine for evaluating project compliance and completeness, and the applicant will comply with any such request.

The applicant understands and agrees that submission of the completion report and approval by ConnectMaine shall be a precondition to full payment of grant funds under this agreement.

The applicant shall maintain records of all contracts, papers, correspondence, proof of payment affidavits, employee time sheets or ledgers, books, accounts and other information relating to payments made, and the applicant's performance of the project. During the term of this agreement and reporting periods, the applicant shall cooperate and comply with all reasonable requests by ConnectMaine or the State of Maine with respect to auditing and reporting requirements; upon reasonable notice to the applicant, ConnectMaine shall have the right to audit and inspect books and records pertinent to the applicant's performance of its obligations under this agreement.

VII. Conditions

The applicant agrees that it is receiving grant funds for only purposes that comply with the requirements of the ConnectMaine statute, 35-A M.R.S.A. Ch. 93, and ConnectMaine rule, 99-639 Ch. 101, and that it shall be liable for repayment of grants funds expended for purposes ineligible; however, the applicant shall not be liable for such repayment if the applicant expended grant funds in good faith reliance on authorization of the proposed expenditure by or specific guidance from ConnectMaine.

The applicant will be required to return grant funds based on the difference between anticipated expenses in the proposed project compared to the actual final expenses, or as a proportion of the affected communities proposed to be covered by the project compared to the number of affected communities actually covered by the project, whichever amount is greater.

ConnectMaine or its designee may seek appropriate criminal or civil penalties as authorized by law for a violation of the terms or conditions of the applicable program, grant, or award.

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VIII. Confidentiality

ConnectMaine and the applicant shall comply with the requirements below for protection of confidential information, subject at all times to ConnectMaine's obligations under law, including but not limited to, Maine's Freedom of Access Act, 1 M.R.S. §401 et seq.

Confidential information shall mean all information, regardless of the form in which it is communicated or maintained (whether oral, written, digital or visual) which is disclosed to the other party, that relates to the Project, that is clearly marked as confidential by the disclosing party.

Confidential information shall not include information which:

1. was publicly known and made generally available in the public domain, or
2. becomes publicly known and made generally available through no action or inaction of the applicant or ConnectMaine, or
3. is required by law to be disclosed by a party.

Neither ConnectMaine nor the applicant make any warranties, express, implied or otherwise, regarding the accuracy, completeness or performance of confidential information. Neither ConnectMaine nor applicant shall disclose confidential information to any other party. Neither ConnectMaine nor applicant shall use confidential information for any purpose other than executing and reporting on the project.

The obligations of ConnectMaine and the applicant hereunder shall survive termination of this agreement, and shall extend until such time as all confidential information becomes publicly known and made generally available through no action or inaction of the applicant or ConnectMaine, or all confidential information has been destroyed or returned to ConnectMaine.

The parties acknowledge and agree that any breach of these confidential information terms will constitute immediate and irreparable harm to the other party and/or its successors and assigns, which cannot adequately and fully be compensated by money damages and will entitle the non-breaching party to, in addition to all other rights and remedies afforded by law, injunctive relief, specific performance and/or other equitable relief, as well as reimbursement of expenses (including reasonable attorneys' fees) incurred by the non-breaching party in enforcing this agreement. A party's rights and remedies hereunder are cumulative and not exclusive.

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X. Terms

The applicant shall indemnify and hold harmless ConnectMaine and its officers, agents, and employees from and against any and all third party claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the applicant, its employees or agents, officers or subcontractors in the performance of work under this agreement; however, the applicant shall not be liable for claims arising out of the negligent acts or omissions of ConnectMaine, or for actions taken in reasonable reliance on written instructions of ConnectMaine.

None of the terms of this agreement shall be considered waived from the lack of enforcement of any one of the terms of this agreement by a party. Any violation or threatened violation of this agreement by the applicant may cause irreparable injury to ConnectMaine, entitling ConnectMaine to seek any remedy to which it is entitled under law.

This agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State of Maine regarding this agreement shall be brought in state administrative or judicial forums. The applicant consents to personal jurisdiction in the State of Maine.

The parties are signing this agreement which shall be effective as of the date of the last signatory.

Applicant Signature:

Date:

ConnectMaine Signature:

Date:

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Attachment A

As the applicant described in its application, a Community Broadband Plan will be completed for at least the following communities in the municipality of Portland: Peaks Island, Great Diamond Island and Little Diamond Island

The applicant will conduct Phase I activities, which include:

- Determining local broadband needs and goals;
- Inventorying the existing infrastructure assets;
- Conducting a gap analysis defining the additional broadband infrastructure necessary to meet identified needs and goals;
- Assessing relevant municipal procedures, policies, rules and ordinances that have the effect of delaying or increasing the cost of broadband infrastructure deployment; and
- Strategizing to promote digital inclusion that addresses affordable internet service and equipment, digital literacy and public computer access.