

Hi Bill – As you know, this draft Covenant of Purpose, Use and Ownership (the “Covenants”) relates to Seabrook’s receipt of \$695,965 from the Economic Development Administration (“EDA”), which money is being acquired to repair the sheet pile bulkhead on the Hampton-Seabrook Harbor, timber fencing, and related site work (the “Project”). See Covenants, Recitals.

To provide some context, to release funds for a project, the EDA requires a project recipient (in this case, the Town) to enter into covenants or a similar recordable agreement with the EDA. See 13 CFR 314.2(a) which covenants define the EDA and the Town’s rights and obligations.

Here, the Town should understand that the Covenants require the Town to agree to a number of conditions for the estimated useful life of the Project (15 years). In essence, the EDA has an ownership interest in the Project for that 15-year period. After 15 years, the EDA will release its ownership interest, upon the Town’s request. ¶14. See also 13 CFR 314.10(a). After the EDA releases its interest, the Town will continue to have a duty to ensure the project is not used in a manner that discriminates against any civil rights. See 13 CFR 314.10 (e)(3); 13 CFR 302.20.

The primary conditions the Town must adhere to are as follows, please let us know if you have any questions regarding same:

- i. For the useful life of the Project (15 years) the Town cannot sell, lease, transfer, convey, encumber or mortgage any interest in the Project property and can’t use the Project property for anything other than the Project purposes delineated in the Covenants (repairs to the sheet pile bulkhead on the Hampton-Seabrook Harbor, along with timber fendering and related site work). Covenants, ¶12.
- ii. The Town must use all of the money for the project’s purpose—repairing the harbor bulkhead and related site work. If the Town has concerns that certain work might not qualify as “related site work,” it should ask for the project description to be modified to ensure all parties agree as to what work can be paid for with the federal funds. Covenants, ¶14 & Recitals. If the Town wants to use the project for another purpose, it must obtain prior written approval from the EDA. Covenants, ¶14.
- iii. The Town must buy an insurance policy for a minimum of the full replacement value of the project. ¶6.
- iv. The Town must keep the project in good condition and repair, and must notify the EDA if the project’s condition deteriorates. Covenants, ¶7.
- v. The Town must indemnify the Federal Government related to the project. Covenants, ¶8.
- vi. If the Town breaches the covenants, it will be liable to the EDA for either the amount the EDA contributed plus interest or the EDA’s proportionate share of the fair market value of the project. ¶11.
- vii. The Town must record the covenants. ¶16.

We reviewed the covenants against the Federal laws and rules related to the EDA, and nothing in the covenants appears out of order.

We note that the covenants require a Property Description which we assume the Town has.

We recommend reviewing the Covenants in detail and ensuring that the Town is comfortable with all conditions listed therein. We are happy to provide any additional assistance or guidance, as requested by the Town.

Best,

Justin

Justin L. Pasay, Esq.
Donahue, Tucker & Ciandella, PLLC
[111 Maplewood Ave., Suite D](#)
[Portsmouth, NH 03801](#)
Phone [\(603\) 766-1686](#)
Fax [\(603\) 766-1687](#)
Email: jpasay@dtclawyers.com
Web: www.dtclawyers.com