

THE CITY OF NEWPORT

**RESOLUTION
OF THE
COUNCIL**

No.

RESOLVED: That the City of Newport approves the Subrecipient Agreement by and between the Rhode Island Department of Transportation and the City of Newport for Safe Routes to School (SRTS) – Newport and further grants signature authority to the City Manager upon final review and approval of said document by the City Solicitor.

IN COUNCIL
READ AND PASSED

Laura C. Swistak
City Clerk

SUBRECIPIENT AGREEMENT

By and Between

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

and the

CITY OF NEWPORT

Safe Routes to School (SRTS) –NEWPORT

AGREEMENT made and entered into by and between the State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the State) and City of Newport which has as its registered DUNS¹ number: 075714626.

WHEREAS, the State is the recipient of Safe Routes to School (SRTS) funding from the United States Department of Transportation, administered through the Federal Highway Administration (hereinafter FHWA); and

WHEREAS, the State of Rhode Island has approved the City's application for funding the Newport Safe Routes to School (hereinafter the Project); and

WHEREAS, no Research & Development (R & D) activities are part of the Project; and

WHEREAS, the City of Newport agrees to be responsible for the design and construction of the Project; and

WHEREAS, the Project will be implemented under the provisions established in the Federal – Aid Policy Guide of the FHWA, FHWA regulations at Title 23 of the Code of Federal Regulations and State requirements and procedures; and

WHEREAS, the State and City of Newport recognize that Project funds may be reduced based upon obligational authority limitations. The State will work with the Safe Routes to School Steering Committee (Subcommittee to the State Planning Council's Transportation Advisory Committee) to set priorities based on limitations on available funding; and

WHEREAS, The State has Agreed to contribute funds not exceeding Two Hundred and Thirty Thousand Dollars (\$230,000) towards construction of the project; of this amount, Eighty Percent (80%) One Hundred and Eighty-Four Thousand Dollars (\$184,000) is federally funded, and Twenty Percent (20%) Forty-Six Thousand Dollars (\$46,000) is state funded.

NOW THEREFORE, in consideration of the foregoing premises and the mutual obligations herein, the State and the City of Newport hereby agree as follows:

1. The Project elements shall include Improvements to Hillside Avenue from Bedlow Avenue to Maple Avenue include traffic calming improvements plus pedestrian and bicycle safety improvements. A sidewalk will be constructed from Bedlow Avenue to Admiral Kalbfus Road and sidewalk accessibility improvements will be

¹ Data Universal Numbering System (DUNS) number. Note: The Name of the Entity must match the name associated with its DUNS number as listed in the System for Awards Management (SAM).

constructed from Admiral Kalbfus Road to Maple Avenue. Traffic calming measures will be installed, along with bike lanes from Admiral Kalbfus Road to Maple Avenue.

2. The authorized start date of the Project for reimbursement purposes shall be the purchase order authorization date. Project performance end date will be in December 2024.
3. The City of Newport will be responsible for design and construction of the Project in accordance with the plans and specifications approved by the State.
4. The State will monitor the activities of the City of Newport as necessary to ensure that the funds are used for authorized purposes, in compliance with Federal statutes, regulation, and the terms and conditions of this Agreement.
5. Prior to the start of construction, the City of Newport shall certify to the State that all improvements made as part of the Project are on public right-of-way and that no private properties, acquisitions, easements, or other right-of-way permissions are required.
6. The City of Newport will be responsible for payment of all costs associated with design and construction of the Project; the State will reimburse the City of Newport up to and not exceeding Two Hundred and thirty-thousand Dollars (\$230,000) for the costs of construction; costs in excess of said reimbursement are the responsibility of the City of Newport. Supporting documentation of payment will be required for all reimbursements.
7. The City agrees to indemnify, defend and hold harmless the State, the Department, its officers, employees and agents, from any and all suits, actions, claims, liabilities, damages, losses, penalties, or costs of any character or nature brought on account of any injuries, death, damages sustained by any person or property, or from any violations of local, state or federal laws or regulations, arising out of or from any cause whatsoever in relation to the Project or this Agreement except to the extent caused by the negligent acts or omissions of the State only. The City shall acquire insurance at the minimum amounts as specified in the State's Standard Specification for Road and Bridge Construction (latest edition and/or compilation), the State must be listed as an additional insured and Loss Payee on any such insurance policy, and the State must be provided a Certificate and Endorsement page as proof. All insurance policies shall provide thirty (30) days' notice of cancellation to the State.
8. The City of Newport will select a Project Manager to administer the Project. Such administration will include but not be limited to the coordination with RIDOT on the review and approval of 30% 90% and PS&E and advertising set of contract documents, contract addenda, and Change Orders. The City of Newport shall also be responsible for the maintenance of a Project account, as well as processing invoices, change orders, and contract addenda. The City of Newport will maintain all financial records.
9. Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws of Rhode Island (state funds), or 49 CFR part 26 (federal funds), Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement.
 - A. The State shall not issue a Notice to Proceed to construction of the Project until such MBE/DBE plan, if required, has been approved.
 - B. This Project will be assigned a MBE/DBE goal. RIDOT requires the submission of executed MBE/DBE subcontract Agreement(s) between the prime contractor and any qualified MBE/DBE subcontractor(s) who will perform work under this Contract. These executed contract Agreements

should be addressed to the Department's Office of Business and Resources for approval and include the executed MBE/DBE Utilization Form as the cover sheet for the MBE/DBE subcontracts. The DBE Utilization Form is Exhibit A of this Agreement.

- C. When the City of Newport is ready to award a contract, the contract documents must include the MBE/DBE Special Provisions contained in Exhibit C of the Agreement.
10. Pursuant to EEO 11246 and 41 CFR Part 60, a contractor-based program to provide on-the-job training (OJT) must be approved by the Department as referenced in the Required Contract Provisions for Federal-Aid Projects (FHWA-1273) Index under Training Special Provisions (REV. 09/23/97) (Job Specific) {Page 24}. This program must be submitted by the contractor and / or subcontractor(s) whose work is valued at \$10,000 or greater to the Department's Civil Rights Office for approval. Contact RIDOT OJT Coordinator to obtain OJT training plan approval and form(s) with instructions for submittal if this is applicable.
 11. As a condition to receiving any federal financial assistance from the FHWA through the State, the City of Newport is subject to and must comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-4, 49 C.F.R. Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and other pertinent anti-discrimination directives that form the basis of the State's Title VI/Nondiscrimination Program, including 23 U.S.C. § 109(h); 23 U.S.C. § 324; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 – 3619; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 – 4655; the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 – 6107; Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12165; 49 U.S.C. § 5332; Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; and Executive Order No. 13166, Improving Access to Services for Persons with Limited English Proficiency. Furthermore, prior to submission of the first reimbursement request, City of Newport will submit to the State a signed **Sub-Recipient Title VI Assurances and Non-Discrimination Provisions** form which is located on page 1 of Exhibit B.
 12. In accordance with the Code of Federal Regulations, 23 CFR 633.102(e), "The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA-1273 shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of Form FHWA-1273." A copy of Form FHWA 1273 can be found at <http://www.fhwa.dot.gov/programadmin/contracts/>. Modifications to the provisions of Form FHWA-1273 are not allowed.
 13. Similarly, pursuant to obligations imposed under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d – 2000d-4, 23 CFR 200.9 and 49 CFR 21.7, the contractor shall include in every subcontract the provisions of paragraphs (1) through (6) of the attached Title VI Assurances, [See Exhibit B, Appendix A, Pages A-1 and A-2], unless exempt by regulations or directives issued pursuant to 49 CFR Part 21.
 14. Public Law 109-282, the Federal Funding Accountability and Transparency Act of 2006 as amended (FFATA), requires full disclosure of all entities and organizations receiving federal funds including grants, contracts, loans and other assistance and payments through a single publicly accessible Web site, USASpending.gov.

- A. In accordance with the Federal Fiscal Accountability Transparency Act (FFATA) and State of Rhode Island policy, all recipients and sub-recipients of federal funds must have a valid DUNS number² and be registered with the **System for Award Management**.³
 - B. The City of Newport is required to show evidence of current registration in both systems. To download a PDF verification, go to www.sam.gov and go to "Search Records," enter the City of Newport DUNS number, and select "Export PDF." Submit SAM Search Results PDF form with this Agreement.
 - C. The City of Newport is required to maintain active registration in the **System for Award Management**. Registration must be reviewed and updated a yearly basis prior to expiration date.
15. The City of Newport shall submit a copy of the single audit report required under Office of Management and Budget (OMB) Uniform Guidance 2 C.F.R. 200.501 to the State if during any fiscal year the City of Newport expends a total amount of Federal awards equal to or in excess of \$750,000, it shall have a Single Audit performed in accordance with OMB Uniform Guidance 2 C.F.R. 200.501. The required audit must be completed within 9 months of the end of the City of Newport audit period. Within 6 months of RIDOT's receipt of the audit, the Department will issue a management decision on the audit findings.
- A. Conversely, if during any fiscal year the City of Newport expends a total amount of Federal awards less than \$750,000, it shall be exempt from the Single Audit requirement for that fiscal year.
 - B. The contents of the Federal Single Audit (the "Audit Reports") must be in accordance with the Government Auditing Standards issued by the Controller General of the United States.
 - C. The Audit Reports shall comply with the requirements as outlined in OMB Uniform Guidance 2 C.F.R. 200.501.
 - D. The City of Newport shall require that the work papers and reports of an independent Certified Public Accountant ("CPA") be maintained for a minimum of five (5) years from the date of the Audit Report. Moreover, the City of Newport will adhere to the applicable OMB Uniform Guidance at 2 C.F.R. 200.501 compliance requirements for projects funded under CFDA number 20.205.
16. The design of the Project will conform to all State design standards and policies.
- A. The City of Newport will submit the design plans to the State for review and approval at the preliminary stage of design and submit the plans, specifications, and estimates (hereinafter PS&E) at the 90% stage of design and at the PS&E stage of design. Such submissions will include but not limited to all engineering, landscaping, and permitting requirements, as applicable to the Project.
 - B. The State will respond to the submissions within thirty (30) days of their receipt.
 - C. Review by the State is for the limited purpose of confirming that final design documents will be acceptable to the State and is not intended to relieve the City of Newport of full responsibility with respect to errors and omissions.
17. The City of Newport will work with the State to obtain an Environmental Determination of no significant impact on the Project in accordance with FHWA regulation at 23 CFR Part 771.117. Neither right-of-way

² To obtain a DUNS number, go to <https://iupdate.dnb.com/iUpdate/companylookup.htm>

³ To register with the System for Award Management, go to www.sam.gov

actions nor construction of the project may proceed until receipt of said Environmental Determination. The City shall be responsible for obtaining all applicable permits.

18. The City of Newport will construct the Project using the design approved by the State subject to the following requirements:
 - A. In awarding the construction contract to the lowest qualified bidder, the City of Newport will use competitive bidding for the Project in conformance with 23 CFR Part 635 and will comply with all provisions of Title 37, Chapter 2 of the Rhode Island General Laws.
 - B. The City shall assign an engineer to ensure that the Project is completed in accordance with approved plans and specifications.
 - C. The City may utilize a Resident Engineer from its Public Works Department and/or consulting engineering services to be responsible for administration of the construction of the Project. This responsibility shall include:
 - i. Monitoring the rate of progress by the contractor on the Project; interpretations of the City's contract documents and acceptable fulfillment of work by the Contractor.
 - ii. Ensuring that completed work by the contractor conforms to the contract documents.
 - iii. Decision making authority on the quality and acceptability of materials furnished, including the authority to reject defective material and/or suspend work that is being improperly performed.
 - iv. Authority to make changes to quantities not greater than ten percent (10%) of the corresponding values in the contractor's proposal.
 - v. All Change Orders shall be pre-approved by the State before work detailed in the Change Order is performed.
 - vi. Site visits at intervals appropriate to the various stages of construction to observe progress and inspect the quality of work; and, providing for more continuous visits and observations through qualified assistants as mutually agreed upon with the State.
 - vii. Issuance of interpretations and clarifications of the contract documents and review and approval of shop drawings and samples as required.
 - viii. Receipt and review of inspections and tests to ensure compliance with the contract documents.
 - ix. Review of applications for payment; and recommendation of payment based on the progress and quality of work in accordance with the contract documents.
 - x. Quarterly monitoring and reporting of DBE requirements.
 - xi. Preparing a reproducible set of as-built drawings.
 - D. The City of Newport shall be responsible for ensuring that materials incorporated into the Project are in conformance with State Standards and Specifications, material testing is subject to State reimbursement.

- i. The City of Newport shall submit a Materials Testing Schedule based upon the Department's Master Materials Testing Schedule to the State for review and approval before commencing construction.
 - ii. Steel, aggregate, soils, Portland cement concrete, and bituminous concrete utilized in construction of the Project shall be obtained from State approved sources and sampled and tested by personnel certified by either the Northeast Transportation Training and Certification Program, the National Institute for Certification of Engineering Technologies, or American Concrete Institute, whichever may be applicable, for the materials being sampled and tested.
 - iii. Steel used in permanent placements shall comply with Buy America Requirements.
 - iv. The City of Newport shall obtain certificates of compliance and mill certifications in accordance with the approved Materials Testing Schedule.
 - v. The City of Newport must certify that all materials used as part of the Project comply with the design specifications established for the Project.
 - vi. Contractor test results shall not be used for materials acceptance.
 - vii. All samples shall be random samples and all sampling and all testing shall meet the requirements of 23 CFR Part 637, Construction Inspection and Approval.
 - viii. Manufacturer certificates of compliance must accompany each shipment of product and must be received and accepted by the Project Manager prior to incorporating the product into the work. Under no circumstances will the State reimburse costs for items where certificate of compliance is required.
- E. The City of Newport must certify that prevailing wage (Davis-Bacon Act in accordance with 29 CFR 5.5) rates have been paid during the construction of the Project. Certifications of prevailing wage rates must be provided with each invoice subject to review and acceptance by the State in accordance with State procedures.
- F. For projects within the State highway right-of-way, in accordance with 23 CFR 635.105, the State shall assign an engineer to ensure that the Project is completed in accordance with approved plans and specifications.
- G. The City of Newport shall notify the State in writing of the anticipated start date of construction. Notification shall be delivered by hand or by certified mail, electronic mail, return receipt requested, in an envelope addressed as follows:

Administrator, Office of Transit

2 Capitol Hill – Room 316

Providence, RI 02903

19. The following are the General Program Requirements for the submission of reimbursement requests by the City of Newport.

- A. The City of Newport shall invoice the State for work completed by the contractor on the Project and the cost of materials supplied by the contractor to the Project in accordance with State requirements and procedures. All Invoices shall include proper documentation, including but not limited to proof of payment for expenses included in the invoice. All invoices shall be sent directly to:

Department of Transportation
Attn: Accounts Payable
Two Capitol Hill, Room 222
Providence, RI 02903

- B. The City of Newport shall submit reimbursement requests with a cover letter signed by the Project Manager containing the following language and provisions:

"I hereby certify that the materials and work for which payment is being requested meets the requirements of the contract documents and approved change orders in all respects, except as noted below. This certification is made in full cognizance of the Federal False Statements provisions under United States Code, title 18, section 1020, and I am duly authorized to certify on behalf of City of Newport."

20. The following are the General Program Requirements for the finalization and closeout of the Project:

- A. Finalization and acceptance of the Project shall be performed by the State. The following items are required to finalize and close the Project:
 - i. Final Inspection Report
 - ii. Corrective action plan(s) and Certification for Punch List Resolution
 - iii. RIDOT's Certificate of Completion & Final Acceptance certifying that the Project has been completed accordance with the contract documents
 - iv. DBE Request for Verification of Payment
 - v. Certification for Prevailing Wage (Davis Bacon) Rate
 - vi. Anti-Collusion Certification for Contract and Force Account
 - vii. Certification Regarding Debarment, Suspension, and Other Responsibility Matters Appendix A - Primary Covered Transactions and Appendix B - Lower Tier Covered Transactions
 - viii. Materials, Certificates of Compliance & Mill Tests Certification
 - ix. Copy of Single Audit Report(s) issued in years in which work was performed if applicable

x. Equal Employment Opportunity Certificate of Compliance

xi. A copy of As-Built Plans

21. The City of Newport and State agree that no work associated with relocation of utilities underground shall be subject to reimbursement as part of this project.
22. The State reserves the right to have access to any documents, papers, or other records of the City of Newport which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the City of Newport personnel for the purpose of interview and discussion related to such documents.
23. The Project shall be subject to inspections by the State in accordance with State procedures. All findings must be satisfactorily addressed before final reimbursement by the State.
24. Upon substantial completion of the Project, the City of Newport will be responsible for the maintenance of the facility/facilities constructed under this Agreement, in accordance with plans and specifications developed for the Project at its own cost and expense. The facility shall be in an accessible condition for all pedestrians, including persons with disabilities, with only isolated and temporary interruptions in accessibility as required under with 28 CFR § 35.133. This maintenance obligation includes reasonable snow removal efforts.
25. All costs billed under this Agreement are subject to audit. The City of Newport agrees to maintain all records pertaining to the costs incurred in performance of the Project and this Agreement for a period of three (3) years from the date of final payment and all other pending matters are closed.
26. The State reserves the right to terminate this Agreement if state or federal funds are rescinded or not authorized.
27. The City of Newport Manager will take all necessary steps to receive authority from City Council to enter into and execute this Agreement including but not limited to submission of the Agreement to the City Council for ratification and submission of proof of such authority to the State prior to advertising construction of the Project.
28. This Agreement may not be altered or amended except by written agreement signed by all the parties.


IN WITNESS WHEREOF, the Rhode Island Department of Transportation and the City of Newport have caused this Agreement to be executed by duly authorized officials on the _____ day of _____, 20__.

DEPARTMENT OF TRANSPORTATION:

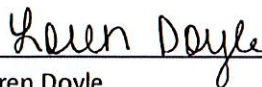
CITY OF NEWPORT

RECOMMENDED FOR APPROVAL:

RECOMMENDED FOR APPROVAL:



Stephen A. Devine
Administrator, Office of Transit
Date: 12/30/21

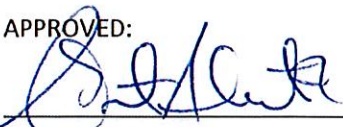


Loren Doyle
Chief Financial Officer
Date: 1/12/22

APPROVED AS TO FORM:


John Igliozi
Assistant Director of Legal Services/
Chief of Staff
Date: 12/31/21

City Solicitor, City of Newport
Date: _____

APPROVED:


Peter Alviti, Jr. P.E.
Director
Date: 1-13-22

APPROVED:

City Manager, City of Newport
Date: _____

EXHIBIT A



DBE Utilization Plan

Project Name: _____

RIC Number: _____ Date Bid Opened: _____

THIS SECTION IS TO BE COMPLETED BY THE PRIME CONTRACTOR

The following utilization plan represents our DBE participation in accordance with the RIDOT DBE Special Provisions and 49 CFR 26.53. Should any of the services performed and materials provided by the DBEs listed below involve a third party or otherwise be found not to comply with the manner in which counted here, we understand that our firm may be found in non-compliance with the requirements of its contract.

I, _____ hereby declare and affirm that I am an authorized representative of _____ (name of Prime Contractor), and that I have personally reviewed material and facts submitted with this DBE Utilization Plan, including all attached subcontracts.

Prime Signature: _____ Date: _____

THIS SECTION IS TO BE COMPLETED BY THE DBE CONTRACTOR

1. My company is currently certified as a Disadvantaged Business Enterprise (DBE) by the state of Rhode Island. There have been no changes affecting the ownership, control or independence of my company since my last certification review.

2. My firm will provide to you, upon request, for the purpose of obtaining subcontractor approval: (a) a resume stating the qualifications and experience of the superintendent or foreperson who will supervise on-site work; (b) a list of equipment owned or leased by my firm for use on the project; and (c) a list of all projects (public or private) which my firm is currently performing, is committed to perform, or intends to make a commitment to perform. I shall include for each project the names and telephone number of a contact person for the contracting organization, the dollar value of the work, a description of the work, and my firm's work schedule for the project.

3. If the prime contractor is awarded the contract, my company intends to enter into an agreement with the above firm to perform the items of work or other activity described on the following sheet for the prices indicated.

4. My firm has the ability to manage, supervise and perform the activity described.

DBE Signature: _____ Date: _____



The DBE firms listed below have been contacted regarding participation on this project. If this Bidder is successful on this project and is awarded the Contract, it shall assure that subcontracts or supply agreements are executed with named DBEs. If the bidder's attempts to solicit sufficient DBE participation to meet the assigned contract goal have been unsuccessful then a "good faith effort" form is to be submitted in accordance with 49 CFR Part 26, Appendix A.

Name of DBE	Description of Work	NAICS Code(s)	Dollar Amount by Subcontract Type (Use one column only)		
			*Material/Supplies	Furnish & Install	Labor Only
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$

*Please note that if materials are obtained from a DBE regular dealer, RIDOT will count 60 percent toward the DBE goal. If materials are obtained from a DBE manufacturer, RIDOT will count 100 percent toward the DBE goal. Materials purchased from or paid for by the Prime are not applicable.

Total Bid Price \$ _____ Total DBE Credit \$ _____ DBE Percentage of Participation _____%

EXHIBIT B

DBE SPECIAL PROVISION
DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION CERTIFICATION FOR
CONTRACTORS AND CONSULTANTS

With respect to the above numbered project, I hereby certify that I am the _____
and duly authorized representative of _____ whose address is _____
_____.

I do hereby certify that it is the intention of the above organization to affirmatively seek out and consider Disadvantaged Business Enterprises to participate in this contract as contractors, subcontractors and/or suppliers of materials and services. I agree to comply with the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 26.

I understand and agree that any and all contracting in connection with this contract, whether undertaken prior to or subsequently to award of contract, will be in accordance with this provision. I also understand and agree that no contracting will be approved until the State Department of Transportation has reviewed and approved the affirmative actions taken by the above organization.

DEFINITIONS:

A "Broker," for purposes of this provision, is a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party.

A "DBE Contractor" or "DBE Subcontractor," for purposes of this provision, is a DBE that has entered into a legally binding relationship with an obligation to furnish services, including the materials necessary to complete such services.

"Disadvantaged Business Enterprise" or "DBE," for purposes of this provision, means a for-profit small business concern certified by the Rhode Island Department of Administration, under U.S. Department of Transportation certification guidelines (a) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

A "Joint Venture," for purposes of this provision, is an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

A "Manufacturer," for purposes of this provision, is a DBE that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications.

A "Regular Dealer" is a DBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the

Rev.09/26/2017

public in the usual course of business. In the sale of bulk items, such as cement, asphalt, steel and stone, a DBE firm may be considered a "regular dealer" if it owns and operates the distribution equipment used to deliver its products. Any additional equipment used by a regular dealer shall be through long-term lease agreements rather than on an ad hoc or contract-by-contract basis.

"Race conscious" measures (goals) or programs are those that are focused specifically on assisting DBEs.

"Race neutral" measures (goals) or programs are those that are, or can be, used to assist all small businesses, including DBEs.

"Small Business Concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121), and that does not also exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian Tribe¹, Alaska Natives, or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. "Subcontinent Asian Americans," this includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
 - f. Women; and
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such a time as the SBA designation becomes effective.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

¹ A "tribally-owned concern" means any concern at least 51 percent (51%) owned by an Indian tribe as defined in 49 CFR 26.5.

I. GENERAL REQUIREMENTS AND SANCTIONS:

- A. Failure by the Contractor to demonstrate every good faith effort in fulfilling its DBE commitment during the construction period will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by the established DBE percentage (listed in Section II. A. below), and subtracting the dollar value of the work actually performed by DBE contractors. This action will not preclude RIDOT from imposing sanctions or other remedies available as specified in paragraphs below.
- B. Contractors and subcontractors are advised that failure to carry out the requirements of this provision shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department, or such remedy as the Department deems appropriate. Greater detail of the rules and regulations regarding DBE utilization can be found in the Rules and Regulations for RIDOT DBE Program.
- C. Brokering of work by DBEs is not allowed and is a contract violation unless DBE is a certified DBE broker. A DBE firm involved in brokering of work may have their certification removed or suspended and shall be subject to the sanctions stated herein. Any firm that engages in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be subject to sanctions described in paragraph (B) above and referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, USC Section 1001.
- D. The Disadvantaged Business Enterprises Directory or other available resources may be obtained at the Rhode Island Department of Transportation Office of Civil Rights (OCR), 2 Capitol Hill, Providence, RI 02903, or at <http://odeo.ri.gov/>.
- E. The utilization of Disadvantaged Business Enterprises is in addition to all other equal opportunity requirements of this contract. The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the Contractor shall include:
 - 1. The number of DBE contractors, subcontractors and suppliers; and the type of work, materials or services being performed on or incorporated in this project.
 - 2. The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
 - 3. Documentation of all correspondence, contacts, telephone calls, etc. necessary to obtain the services of DBEs on this project.
 - 4. Copies of canceled checks or other documentation that substantiates payments to DBE firms.
 - 5. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by RIDOT and the Federal Highway Administration.
- F. A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification at the time of the contract execution or the award of contract will be nullified.

II. PRE-AWARD REQUIREMENTS:

- A. Prior to contract award and within five (5) days from the opening of bids, the contractor/consultant shall, at a minimum, take the following actions to meet the race-conscious goal established by OCR, hereinafter referred to as the 'contract goal':
 - 1. Appoint an EEO Officer to administer the Contractor's DBE obligations.
 - 2. Submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed subcontract agreement(s)/purchase orders, including a detailed description of the

- work and price, between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE obligation as stated in the Scope of Work. This DBE obligation shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value.
3. Each construction subcontract submitted shall be accompanied by a completed "DBE Utilization Plan" that specifies the items of work to be performed and the contractor's commitment to complete each subcontract entered into with a DBE pursuant to meeting the contract goal stated herein.
 4. Any subcontract for materials or supplies provided by a DBE broker, or for other services not provided directly by a DBE firm, shall be accompanied by the RIDOT Broker Affidavit form.
- B. In the event that the cumulative percentages submitted do not equal or exceed the contract goal, RIDOT will conduct a good faith effort (GFE) review to determine the extent of the prime contractor's efforts to seek out DBEs and afford adequate subcontracting opportunities to meet the contract goal. Evidence in support of the prime's actions must be submitted using RIDOT's Good Faith Effort Form (GFEF). This form contains examples of the types of evidence set forth in 49 CFR Part 26, Appendix A. RIDOT will consider this and other relevant evidence in making its GFE determination.
1. Where RIDOT has determined that the prime contractor made every good faith effort to meet the contract goal, the contract shall be awarded.
 2. Where RIDOT has determined that the prime contractor failed to make every good faith effort in meeting the contract goal, the contract shall not be awarded, and an opportunity for administrative reconsideration shall be provided.

III. CONSTRUCTION PERIOD REQUIREMENTS:

A. Counting of Participation and Commercially Useful Function (CUF)

The total dollar value of a prime contract awarded to a DBE will be counted toward the DBE requirement. Likewise, all subcontract work performed by a DBE will count toward the DBE requirement.

The allowable value of a subcontract with DBE participation will be treated as the commitment of the prime contractor toward meeting the contract goal. The specific rules for crediting DBE participation toward contract goals are as follows:

1. When a DBE participates in a contract, RIDOT will consider only the value of the work actually performed by the DBE toward DBE goals. RIDOT includes the entire amount of that portion of a construction contract (or other contract not covered by paragraph (3) of this section) that is performed by the DBE's own forces. RIDOT credits the cost of supplies and materials purchased or leased by the DBE subcontractor for the work of the contract. However, supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate are not counted toward participation.
2. RIDOT credits the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a *joint venture*, RIDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

RIDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function (CUF) on that contract.

1. A DBE performs a CUF when it is responsible for execution of the work of the contract, and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, RIDOT evaluates the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. Even if a DBE is performing pursuant to normal industry practices, if those practices, in fact, erode the ability of the DBE to control its work and remain independent, the practice may affect how much can be credited toward the DBE goal and may raise questions about the DBE eligibility.
2. Suppliers: A supplier is considered to perform a CUF when it packages, i.e. takes quotes from several manufacturers, and/or sells from its own inventory in order to provide one or more items to a contractor. A supplier may own a franchise and/or may be a factory representative to one or more manufacturers. Consistent with a contractor's probable needs, a supplier, not a contractor, may place orders for production with manufacturers.
3. "Pass through" supply operations occur when the contractor decides what items shall be bought from what sources and/or agrees directly with the manufacturer, or other non-DBE party, to schedule delivery and/or directs adjustments and/or routes payments and purchase orders through the DBE. Pass through operations are not commercially useful functions and will not be counted toward contract goals.
4. Management: The DBE must manage the work that has been contracted to its firm. The DBE owner must supervise daily operations, either personally, or with a full-time, skilled and knowledgeable superintendent employed by and paid wages by the DBE. The superintendent must be present on the job site and under the DBE owner's direct supervision. The DBE owner must make all operational and managerial decisions for the firm. Mere performance of administrative duties is not considered supervision of daily operations.
5. Workforce: In order to be considered an independent business, a DBE must keep a regular workforce. DBEs cannot "share" employees with non-DBE contractors, particularly the prime contractor. The DBE shall perform its work with employees normally employed by and under the DBE's control, see paragraph 9 of this section. The DBE must be responsible for payroll and labor compliance requirements for all employees performing on the contract and is expected to prepare and finance the payrolls. Direct or indirect payments by any other contractor are not allowed.
6. Trucking: RIDOT will consider the following factors in determining whether a DBE trucking company is performing a CUF. The DBE must manage and supervise the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - a. The DBE itself must own and operate at least one fully licensed, insured, and operational vehicle being used on the contract.
 - b. The DBE must receive compensation for the total value of the services it provides on the contract using vehicles it owns, insures, and which are operated by drivers it employs.
 - c. The DBE may lease vehicles from another DBE firm, including an owner-operator who is certified as a DBE. The DBE which leases vehicles from another DBE shall receive credit for the total value of the services the lessee DBE provides on the contract.
 - d. The DBE may also lease vehicles from a non-DBE firm, including from an owner-operator. The DBE which leases vehicles from a non-DBE is entitled to credit for the total value of

services provided by non-DBE lessees not to exceed the value of services provided by DBE-owned vehicles on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this subsection (6) (d): DBE firm X uses two of its own trucks on a contract. It leases two trucks from DBE firm Y and six trucks from non-DBE firm Z. DBE credit would be awarded for the total value of transportation services provided by firm X and firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by firm Z, DBE credit could be awarded only for the fees or commission pertaining to those trucks firm X receives as a result of the lease with firm Z.

- e. For purposes of this subsection, a lease must indicate that the DBE has exclusive use of and control over vehicles used on the project. This does not preclude vehicles from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased vehicle. Leased vehicles must display the name and identification number of the DBE.
7. All expenditures with manufacturers and suppliers must be properly documented in writing in order to count toward a DBE obligation. RIDOT will count expenditures with DBEs for materials or supplies toward DBE goals as follows:
- a. For a DBE contractor (furnish and install) to receive credit for supplying materials, the DBE must perform the following four functions: (1) negotiate price; (2) determine quality and quantity; (3) order the materials; and (4) pay for the material itself. If the DBE does not perform all of these functions, it has not performed a CUF with respect to obtaining the materials, and the cost of the materials may not be counted toward the DBE goal. Invoices for the material should show the payor as the DBE.
 - b. If the materials or supplies are purchased from a DBE manufacturer, RIDOT will count 100 percent of the cost of the materials or supplies.
 - c. If the materials or supplies are purchased from a DBE regular dealer, RIDOT will count 60 percent of the cost of the materials or supplies toward DBE goals.
 - d. With respect to flaggers, when flaggers are provided, RIDOT will count 60 percent of the labor. When traffic signs are included with flaggers, the work will be counted as 100 percent.
 - e. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, RIDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, toward DBE goals, provided RIDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees will be evaluated by RIDOT after receiving the Broker's Affidavit Form from the DBE. RIDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals.
8. Subcontractor: A subcontractor arrangement exists when a person or firm has a contractual obligation to perform a defined portion of the contract work and the following conditions are present:
- a. Compensation is determined by the amount of work accomplished, rather than being paid on an hourly basis.
 - b. The subcontractor exercises control over work methods (except as limited by project specifications), while furnishing and managing its own labor and equipment with only minimal, general supervision being exercised by the prime contractor.

- c. The personnel involved in the DBE subcontractor's portion of the project are both under the subcontractor's direct supervision and identified on its payroll records. When warranted by unique circumstances of a project, a DBE subcontractor may be permitted to employ on a limited basis specialty trades personnel who are not normally employed by the DBE subcontractor.
 - d. Second tier DBE subcontracting will be approved only in accordance with normal industry practice and when the type of work differs from work which the DBE usually performs.
9. All factors pertaining to the unique conditions of a project shall be considered in determining whether a DBE subcontractor relationship actually exists on the project. A DBE subcontractor may need to lease/rent equipment, other than over-the-road trucks, and/or augment its workforce with additional skilled personnel in order to perform certain project-related work. The DBE subcontractor is required to arrange for the necessary equipment through rental/leasing agreements, as necessary. (Off-the-road equipment, such as "Euclids," may be rented/leased from the prime contractor even though the CUF guidelines prohibit rental/lease of over-the-road trucks from the prime contractor.) Likewise, in limited instances, the prime contractor may provide some, but not all, personnel to the DBE subcontractor when the following conditions are present:
- a. A DBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force.
 - b. The DBE must not subcontract a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
 - c. The personnel must have a specialized expertise which has not been mastered by the DBE's own skilled/supervising/managerial personnel.
 - d. Such personnel must be placed on the DBE's payroll and come under the direct supervision of the DBE for the performance of the particular subcontract work.
 - e. The deployment of such personnel must be accomplished within the framework of a mentor-protégé agreement; or for emergency purposes, by contract change order. All instances of combining personnel must be for developmental purposes in which teaching/demonstration/consulting to the DBE must occur.
 - f. Long term, continual (e.g. from one contract to another) or chronic use by a DBE firm, of personnel normally employed by another specific firm, lacking a mentor-protégé agreement which is being carried out in good faith, is not consistent with the CUF guidelines.
 - g. To place entire work crews on DBE's payrolls when such personnel are normally employed by another specific firm is not consistent with the CUF guidelines.
 - h. A DBE may need to lease/rent equipment, except for over-the-road trucks, in order to be properly equipped to execute the work of a mentor-protégé agreement. In such cases where the DBE has investigated several possible sources of such equipment within a reasonable geographical area to the project, the DBE may find the best offer was made by the prime contractor or another subcontractor on the project. In such cases, the DBE may rent/lease such equipment from the prime or another subcontractor, provided that the use of such equipment is material to demonstrating/teaching objectives set forth in the mentor-protégé agreement. Thus, the DBE's regular employees, not those temporarily furnished by the prime contractor, or another subcontractor, shall operate such equipment for the majority of the time during which the equipment is used in the work of the DBE subcontractor under the mentor-protégé agreement.
 - i. A DBE's use of equipment owned by a prime contractor or another subcontractor or without an appropriate mentor/protégé program is inconsistent with the CUF guidelines and will result in noncompliance.
10. If a contractor or subcontractor is not certified as a DBE by the Minority Business Enterprise Compliance Office under the specific NAICS code of line items identified in the contract, at the

time of the execution of the contract or issuance of the purchase order, RIDOT will not count that firm's participation toward any DBE goals, except as provided in 49 CFR 26.87(i).

11. RIDOT will not count toward the contract goal the dollar value of work performed by a contractor or subcontractor after it has ceased to be a certified DBE.
12. RIDOT will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until all payments being credited have been fully paid to the DBE.

B. DBE Replacement and Termination:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains RIDOT's written consent as provided in this section; and unless RIDOT's consent is provided under this paragraph, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

1. Good Cause for Replacement or Termination

The prime contractor must provide the Department's OCR with a copy of its "Intent to Substitute /Terminate" notice to the DBE setting forth the reasons for the request. This notice must advise the DBE that it has five (5) days to respond (to prime and State) with objections and why the State should not approve the prime's proposed action.

After adequate notice by the Contractor, if any DBE is unable to perform work committed toward the goal, the DBE shall provide to the OCR a signed statement stating why it is unable to complete the work. The Contractor shall document its efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. In the event the Contractor is not able to find replacement DBE work, the Contractor must provide the OCR with documentation clearly evidencing its good faith efforts. Contractors are prohibited from terminating for convenience any DBE firm used to fulfill a commitment pursuant to meeting the contract goal stated herein.

Prior to substitution or termination of a DBE subcontractor, the contractor shall demonstrate good cause and obtain written approval from the OCR.

In accordance with 49 CFR Part 26.53 good cause includes the following circumstances:

- a. The listed DBE subcontractor fails or refuses to execute a written contract;
- b. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- c. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- f. RIDOT determines that the listed DBE subcontractor is not a responsible contractor;
- g. The listed DBE subcontractor voluntarily withdraws from the project and provides to RIDOT written notice of its withdrawal;
- h. The listed DBE is ineligible to receive DBE credit for the type of work required;

- i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- j. Other documented good cause that RIDOT determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies that RIDOT deems appropriate.

2. Good Faith Efforts to Replace

When a DBE subcontractor is terminated as provided in paragraph (1) of this section, or fails to complete its work on the contract for any reason, RIDOT requires the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal RIDOT established for the procurement. The good faith efforts shall be documented by the contractor. If RIDOT requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and RIDOT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated. The determination shall be made by the DBELO, under the criteria established below.

If there is a change order to a contract on which there is a DBE contract goal, then that contract goal applies to the change order as well as to the original contract. In the event of significant change orders, good faith efforts are required dependent upon the type of change order; RIDOT determines on a case-by-case basis what constitutes good faith efforts in the context of a particular change order. This could include modifying the contract goal amount applicable to the change order if circumstances warrant. When a change order decreases work, i.e. RIDOT determines specific line items are no longer necessary on a contract or there is a quantity change on an item, no good faith effort must be shown. However, when an increase of work occurs or there is a termination of a DBE, good faith efforts must be shown in accordance with the preceding requirements.

C. Monthly Payment Certifications:

All contractors on RIDOT projects are required to certify their payments to subcontractors by use of RIDOT's contractor compliance software on a minimum of a monthly basis (which, at time of publishing, is Prism). A project may not proceed to finalization without the input of this information. RIDOT's Prompt Payment Clause applies to both DBE and non-DBE subcontracts. The Contractor is responsible for the subcontractors' compliance with the submission of their payment reporting by way of this software.

D. Joint Check Procedure for DBEs:

A prime contractor must receive written approval by the Department's DBELO before using a joint check for materials/supplies called for under a subcontract with a DBE. Joint check requests shall be submitted by the prime contractor to the Department's OCR in writing along with a Joint Check Affidavit and the subcontract agreement. The following are general conditions that must be met regarding joint check use:

1. The use of the joint check shall only be allowed by exception and shall not compromise the independence of the DBE;
2. The second party (typically the prime contractor) acts solely as a guarantor;
3. The DBE must release the check to the supplier;
4. The subcontract agreement must reflect the total contract value, including the cost of materials and installation; actual payments for work performed by the DBE may reflect labor only; and
5. The DBE remains responsible for negotiation of price, determining quality and quantity, ordering materials and installing (where applicable) and paying for the material itself.

IV. FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

Prior to receiving final payment, the Contractor shall provide to the Resident Engineer certification of the dollars paid to each DBE firm using Form "DBE Request for Verification Payment." The certification shall be dated and signed by a responsible officer of the Contractor and by the DBE. Falsification of this certification will result in sanctions listed in Sections I. of this provision.

If this contract contains a DBE goal, the Contract Compliance Officer with the OCR will verify that the Contractor has attained the DBE goal specified on said project or has provided adequate documentation justifying a lesser amount. The final estimate will not be paid to the Contractor until proper certifications have been made.

When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the Department has partially accepted the work and all payments have been certified by the Contractor and subcontractor on the "Certification of Progress Payment" form, the Prime Contractor shall release all retainage held by the Prime Contractor within thirty (30) days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed form within ten (10) days of receipt of payment.

Signature of Contractor or Consultant

Date



**ON-THE-JOB TRAINING
ACKNOWLEDGEMENT AND STATEMENT OF INTENT**

_____ Date

To: RIDOT OJT Coordinator
Office of Diversity and Inclusion
Rhode Island Department of Transportation
2 Capitol Hill Rm109
Providence, RI 02903

Project Name and Number: _____

_____ (Company) has reviewed the OJT training requirements (Training Special Provisions) stated in the contract for the above noted project. Based on these requirements, the availability of applicants within a reasonable area of recruitment, and in an effort to meet the minority and female participation goals outlined in the contract (Affirmative Action Requirements, 41 CFR 60-4.2-Solicitations), our company will select a qualified trainee(s) and conduct training under the classification(s) identified below in accordance with the _____ (Name of Program)

*Submit copy of training program (training classification) to be used.

The undersigned has personally reviewed the content of each selected training classification in relation to the project scope and assures that all portions of training can be completed if initiated by the "no later than" (NLT) date indicated below.

Selected Training Classification	Number of Trainees in Classification	Projected Start Date	NLT Start Date in Order to Complete training hours
1.			
2.			
3.			
4.			
5.			

IMPORTANT: Written justification is required to substantiate the selection of training classifications where company representation is below the minority and female participation goals specified in the contract. Compare columns (i) and (j) of the table on page 2 of 2 with 41 CFR 60-4.2, Affirmative Action Requirements.



**ON-THE-JOB TRAINING
ACKNOWLEDGEMENT AND STATEMENT OF INTENT**

Please provide information regarding your company's current workforce demographics in the trades listed below;

(A) Trade Classification	(B) Total Employees	(C) Female	(D) Hispanic	(E) American Indian or Alaskan Native	(F) Asian	(G) Asian Pacific Islander	(H) Total of columns (C) through (G)	(I) Monthly Percentage (H)/(B)	(J) Female Percentage (C)/(B)
Constr. Supervisors									
Constr. Foreperson									
Carpenters									
Equipment Mechanics									
Equipment Operators									
Grade Foreman Asst.									
Ironworker									
Laborers									
Truck Drivers									

The authorized representative below certifies that the information proved herein is accurate and is made in good faith:

Company HEO Officer

Signature

Date: _____

Approval Disapproval

Date: _____

RIDOT OJT Coordinator

CONTRACTOR: Submit in original to RIDOT OJT Coordinator for review/approval. Distribution: 1 - Contractor; 1 - RIDOT Construction Section (for project records); 1 - Trainee.

EXHIBIT C



**USDOT Standard Title VI/Nondiscrimination
Assurances for Contractors
DOT Order 1050.2A**

I, _____ Name _____, Job Title _____, a duly
authorized representative of _____ Company _____
do hereby certify that the organization affirmatively agrees to the provisions set forth by U.S. DOT
Order 1050.2A, DOT Standard Title VI Assurances and Non-Discrimination Provisions (April 11, 2013)

Signature of Authorized Official

Date

APPENDIX A

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 Non-discrimination 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. **Non-discrimination:** 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, 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.
6. **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

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 USC § 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 non-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 because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

Last Update: November 2017