

RESOLUTION OF THE CITY COUNCIL

No. 277

Approved August 2, 2022

WHEREAS, The City of Providence (hereinafter "the City") is to be the recipient of State Transportation Improvement Program Funding through the Rhode Island Department of Transportation; and

WHEREAS, The State of Rhode Island acting through its Department of Transportation (hereinafter "the State") has approved the City's application for the funding for construction of improvements at the Woonasquatucket River Greenway, which is listed in the State Transportation Improvement Program under ID# 5178 and for construction beginning in 2022 through 2025 (hereinafter "the Project"); and

WHEREAS, The Providence City Council approved a resolution on January 17, 2019 ratifying the Mayor's authorization to enter into the "Subrecipient Agreement By and Among Rhode Island Department of Transportation, City of Providence, and the Woonasquatucket River Watershed Council for the Providence Woonasquatucket Greenway Corridor Enhancements" dated January 19, 2019 (hereinafter "the Subrecipient Agreement"); and

WHEREAS, Amendment One to the Subrecipient Agreement will authorize an additional Five Million Three Hundred Thousand Dollars (\$5,300,000) in funding towards the construction of the Project from the State Transportation Improvement Program; and

WHEREAS, Pursuant to Section 2-21 of the Providence Code of Ordinances, all contracts made and entered into by or on behalf of the City shall be signed and executed by the Mayor of Providence; and

WHEREAS, As a condition of receipt of said funding, the State requires, pursuant to the terms of Amendment One, that the Mayor's signature be authorized by and that said agreement be ratified by the Providence City Council.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Providence hereby RATIFIES the accompanying Amendment One to the original Agreement made and entered into by and among the State and the City and hereby authorizes the Mayor to execute said Amendment One on behalf of the City.

IN CITY COUNCIL
JUL 21 2022
READ AND PASSED

JOHN J. IGLIOZZI, PRESIDENT

ACTING CLERK

I HEREBY APPROVE.

Mayor

Date:

8/2/22

RESOLUTION OF THE CITY COUNCIL

No. 24

Approved January 22, 2019

WHEREAS, The City of Providence ("City") shall be the recipient of State Transportation Improvement Program Funding through the Rhode Island Department of Transportation; and

WHEREAS, The State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the "State") has approved the City's application for the funding for improvements at Woonasquatucket River Greenway (hereinafter the Project), which is listed in the Transportation Improvement Program under ID# 5178 and for design engineering and construction beginning in 2019 through 2021; and

WHEREAS, Pursuant to Section 2-21 of the Providence Code of Ordinances, all contracts made and entered into by or on behalf of the City shall be signed and executed by the Mayor of Providence.

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Providence hereby RATIFIES the accompanying Agreement made and entered into by and among the State, the Rhode Island Department of Transportation and the City and hereby authorizes the Mayor of Providence to execute said Agreement on behalf of the City.

IN CITY COUNCIL

JAN 17 2019

READ AND PASSED

Sabrina Mateo
PRES.

David L. Hynes
CLERK

I HEREBY APPROVE

[Signature]
Mayor
Date: *1/22/19*

SUBRECIPIENT AGREEMENT

By and Among

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

CITY OF PROVIDENCE

And the

WOONASQUATUCKET RIVER WATERSHED COUNCIL

For the

PROVIDENCE WOONASQUATUCKET GREENWAY CORRIDOR ENHANCEMENTS

AGREEMENT made and entered into by and among the State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the State), the City of Providence (hereinafter the City) utilizing its Registered DUNS Number 797675337, and the Woonasquatchet River Watershed Council (hereinafter the WRWC).

WHEREAS, the State, the City and WRWC (hereinafter the Parties) entered into an Agreement (hereinafter the Initial Agreement) on the design, construction and maintenance of the Providence Woonasquatchet Greenway Corridor Enhancements (hereinafter the Project) on May 17, 2017; and

WHEREAS, the Project was originally funded with 100% State funds; and

WHEREAS, the State has determined it is necessary to convert the funding of the Project to include Federal funds, make changes to the funding sources and the approach to construction of the Project; and

WHEREAS, the Parties further agree it is in the best interests of the Project to terminate the existing Agreement and provide for a new Agreement; and

WHEREAS, the funds to be included for use on the Project are administered by the Federal Highway Administration under Catalog of Federal Domestic Assistance (CFDA) 20.205, and

WHEREAS, the State has approved and awarded funds in the Transportation Improvement Program (TIP) under TIP ID Number 5178; and

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

WHEREAS, the State has agreed to contribute up to and not exceeding Five Million Nine Hundred Seventy-Five Thousand Dollars (\$5,975,000) in funds to the Project;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual obligations herein, the Parties agree as follows:

1. In accordance with Paragraph 18 of the Initial Agreement, Incorporated herein as Exhibit A, the Initial Agreement is hereby terminated.
2. The Project will consist of the design and construction of a separated bicycle/pedestrian route along the Woonasquatucket River from Eagle Square to Providence Place; and, if funding allows, additional bicycle/pedestrian connections from Eagle Square to the existing Woonasquatucket River Greenway via the General Electric site along with a connection from Delanie Street to Riverside Park via the Contech Medical Property.
3. The authorized start date of the Project shall be the design purchase order date. The Project performance end date will be December 31, 2024.
4. The City will be responsible for all costs associated with design of the Project and for obtaining all local, state, and federal environmental permits.
 - A. The State will reimburse the City up to and not exceeding Nine Hundred Forty-one Thousand Nine Hundred Fifty-three Dollars and Fifty-five Cents (\$941,953.55) for the costs of design; of this amount Eighty Percent (80%) or up to Seven Hundred Fifty-three Thousand Five Hundred Sixty-Two Dollars and Eighty-four Cents (\$753,562.84) is federally funded to Twenty Percent (20%) or up to One Hundred Eighty-eight Thousand Three Hundred Ninety Dollars and Seventy-one Cents (\$188,390.55) is state funded; costs in excess of said reimbursement are the responsibility of the City.
 - B. Any right-of-way actions identified during the design phase of the Project shall be subject to a future amendment to this Agreement. The City shall not proceed with any right-of-way action prior to an amendment to this Agreement and authorization to proceed from the State.
 - C. Construction of the Project will be subject to a future amendment to this Agreement.
 - D. Total reimbursement for design, right-of-way, utility adjustments, environmental permitting and construction by the State for the Project cannot exceed Five Million Nine Hundred Seventy Five Thousand Dollars (\$5,975,000); of this amount up to eighty percent (80%) or Four Million Seven Hundred and Eighty Thousand Dollars (\$4,780,000) is federally funded and up to twenty percent (20%) or One Million One Hundred and Ninety-Five Thousand Dollars (\$1,195,000) is State funded; costs in excess of said reimbursement are the responsibility of the City.

5. The City shall select a Project Manager to administer the Project. Such administration will include but not be limited to the maintenance of a Project account, as well as processing invoices, change orders and contract records. The City will maintain all financial records.
6. The City will select a consultant to design the Project and develop the bid documents.
 - A. In selecting the consultant, the City will prepare a Request for Proposals (RFP) seeking an engineering consultant to develop the design and bid documents for the Project. The RFP will include the purpose of the Project; the scope of services, description of work, product to be provided, request for a budget and schedule for completion of the Project, as well as the qualifications of the applicant.
 - B. The City will submit the RFP to the State for review and approval. Upon such approval, the City will advertise and issue the RFP in accordance with Federal statutes, regulations and procedures.
 - C. All procurement actions by the City will comply with 23 CFR Part 172.7 and 23 USC 112 (b) (2). Federal reimbursement will be limited to the federal share of the costs allowable under 48 CFR Part 31 (Federal Acquisition Regulations).
7. The City 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 actions nor construction of the Project may proceed without receipt of said Environmental Determination.
8. The following are the General Program Requirements for the submission of reimbursement requests by the City.
 - A. The City shall invoice the State for work completed by the consultant. All invoices shall be sent directly to:

Department of Transportation
Attn: Accounts Payable
Two Capitol Hill
Providence, RI 02903
 - B. Further General Program Requirements for potential right-of-way and construction phases of the Project shall be the subject of a future amendment to this Agreement.
9. The City will design the Project and develop the bid documents in accordance with all State design standards and policies. The WRWC shall review the design plans and documents and provide written approval at each stage of design.

A. The City 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 be 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. 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 full responsibility with respect to errors and omissions.

10. 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 FFATA and State of Rhode Island policy, all recipients and sub-recipients of federal funds must have a valid DUNS number¹ and be registered with the **System for Award Management**.²

B. The City 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 DUNS number, and select "Export PDF." Submit SAM Search Results PDF form with this Agreement.

C. The City is required to maintain active registration in the **System for Award Management**. Registration must be reviewed and updated on a yearly basis prior to expiration date.

D. In accordance with state regulations and procedures, the City will also locate the Rhode Island Office of Management and Budget Sub-Award Reporting Worksheet and fill out Section 2, sign and submit to the State prior to execution of this Agreement.

11. The City 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 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 audit period. Within 6 months of RIDOT's receipt of the audit, the Department will issue a management decision on the audit findings.

¹ To obtain a DUNS number, go to <https://update.dnb.com/iUpdate/companylookup.htm>

² To register with the System for Award Management, go to www.sam.gov

A. Conversely, if during any fiscal year the City 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 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 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.

12. The Parties agree that no work associated with the relocation of utilities underground shall be subject to reimbursement as part of this Project.

13. The State reserves the right to have access to any documents, papers or other records of the City which are pertinent to the State funding award to make audits, examinations, excerpts and transcripts. This right also includes timely and reasonable access to City personnel for the purpose of interview and discussion related to such documents.

14. Upon completion of the Project, the City will be responsible for the maintenance of the facilities constructed as part of the Project at its own cost and expense. The Parties agree that further detail on the City's maintenance responsibilities will be subject to a future amendment to this Agreement.

15. The City will remain responsible for the commitments agreed upon in Amendment One of the Northwest Bike Trail/Woonasquatucket River Bikeway Contract 1 executed on October 2, 2003 and Replacement of the Pleasant Valley Parkway Bridge No. 777 Construction and Maintenance Agreement executed on April 8, 2015 and amended on March 21, 2016, incorporated into this Agreement as Exhibit B (hereinafter Previous Commitments).

A. The State reserves the right to require the City to participate in cost sharing for any work constructed as part of these Previous Commitments removed and/or replaced by the Project.

B. The terms and conditions for cost sharing shall be subject to a future amendment to this Agreement.

C. In the event the State and the City fail to come to agreement on the terms and conditions for cost sharing on impacts to the assets covered under these Previous Commitments, the State reserves the right to provide written notice to the Parties placing the Project on hold until the Parties come to an agreement on cost sharing.

16. All costs billed under this Agreement are subject to audit. The City agrees to maintain all records pertaining to the costs incurred in the performance of the Project and this Agreement for a period of three years from the date of final payment and all other pending matters are closed.

17. The State reserves the right to terminate this Agreement if funds are rescinded or not authorized.

18. This Agreement may not be altered or amended except by written agreement signed by all the Parties.

19. The parties agree the Mayor shall take all necessary steps to receive authority from the City Council to enter into an execute this Agreement, including but not limited to submission of this Agreement to the City Council for ratification and submission of proof of such authority to the State concurrent with execution of the Agreement.

DEPARTMENT OF TRANSPORTATION
RECOMMEND FOR APPROVAL

CITY OF PROVIDENCE & WRWC
APPROVED AS TO FORM

David W. Froh

Date: 12-10-18

City Solicitor — City of Providence

Date:

Administrator, Office of Transit

Date: 12/7/18

Legal Counsel – WRWC

Date:

APPROVED

Chief Financial Officer

Date: 12/18/18

Mayor — City of Providence

Date:

APPROVED AS TO FORM

APPROVED

Assistant Director for Legal Services

Date: 12/17/12

Executive Director - WRWC

Date:

APPROVED

Director

Date: 12/21/88

President, WRWC

Date:

Woonasquatucket River Watershed Council

STATE OF _____

COUNTY OF _____

In _____, Rhode Island, on this _____ day of _____

_____ 2018 before me personally appeared Roy Najecki, President of the Woonasquatucket River Watershed Council Board of Directors, to me known and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed in said capacity, and the free act and deed of said Woonasquatucket River Watershed Council.

Notary Public

Print Name: _____

My Commission Expires _____

CERTIFICATE OF AUTHORITY

I, Zane Silva, certify that I am the Secretary of the Woonasquatucket River Watershed Council in Providence, Rhode Island, the corporation described in and which executed the foregoing instrument with the State of Rhode Island; that the said corporation is organized under the laws of the State of Rhode Island; that the corporate seal affixed to said instrument is the seal of said corporation; that Roy Najecki, President of the Board of Directors who executed said instrument as President of the Board of Directors of said corporation was then President of the Board of Directors of said corporation and has been duly authorized to execute said instrument in behalf of said corporation; that I know the signature of said Roy Najecki and that the signature affixed to such instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
corporate seal of said corporation, this _____ day of _____ 2018.

Secretary

Background Documentation

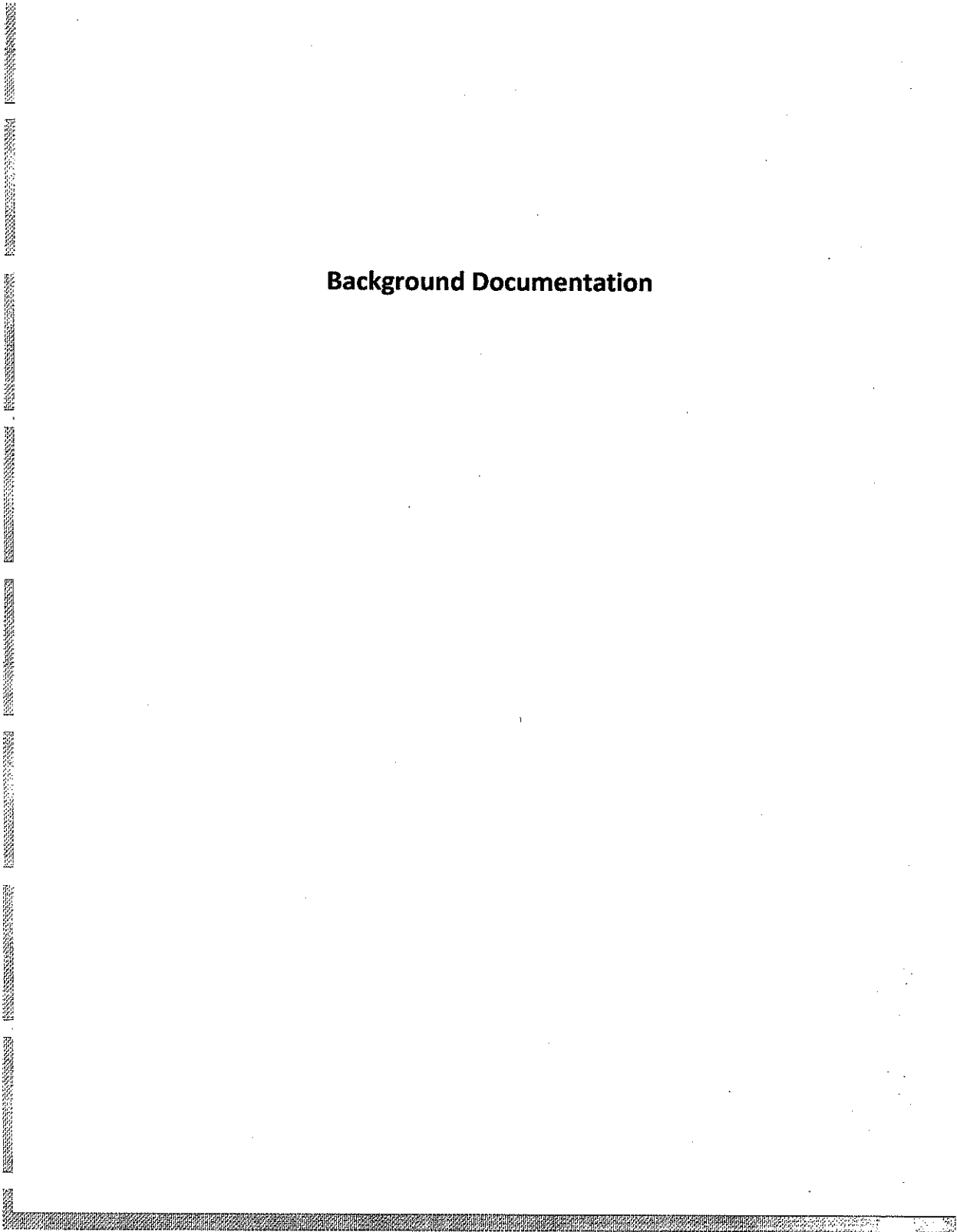


EXHIBIT A

STATE FUNDED SUBRECIPIENT AGREEMENT

By and Among

**RHODE ISLAND DEPARTMENT OF TRANSPORTATION,
CITY OF PROVIDENCE**

And the

WOONASQUATUCKET RIVER WATERSHED COUNCIL

For the

PROVIDENCE WOONASQUATUCKET GREENWAY CORRIDOR ENHANCEMENTS

AGREEMENT made and entered into by and among the State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the State), the City of Providence (hereinafter the City) and the Woonasquacket River Watershed Council (hereinafter the WRWC).

WHEREAS, the State, through its Metropolitan Planning Organization (MPO) has included the Providence Woonasquacket Greenway Corridor Enhancements (hereinafter the Project) in the approved Transportation Alternatives Program; and

WHEREAS, the State, the City and the WRWC (hereinafter the Parties) have agreed to transfer responsibility for implementation of the Project to the City, subject to reimbursement by the State with State funds; and

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

WHEREAS, the State has agreed to contribute Five Million Nine Hundred and Seventy Five Thousand Dollars in State funding (\$5,975,000) for the design and construction of the Project.

NOW THEREFORE, in consideration of the foregoing premises and the mutual obligations herein, the Parties agree as follows:

1. The Project will consist of the study, design and construction of a separated bicycle/pedestrian route along the Woonasquacket River from Eagle Square to Providence Place; and if funding allows; additional bicycle/pedestrian connections from Eagle Square to the existing Woonasquacket River Greenway via the General Electric site along with a connection from Delaine Street to Riverside Park via the Contech Medical property.

2. The authorized start date of the Project for reimbursement purposes shall be the design purchase order date and the construction purchase order date, respectively. The Project performance end date will be December 2022.
3. The Parties agree the City will be responsible for design and construction of the Project in accordance with the plans and specifications approved by the State.
4. The City will be responsible for all costs associated with the design and construction of the Project; the State will reimburse the City up to and not exceeding Five Million Nine Hundred and Seventy Five Thousand Dollars (\$5,975,000) in State funds; costs in excess of said reimbursement are the responsibility of the City.
5. The Parties agree that based on the description of the Project, there is potential for property acquisitions, subject to State procedures.
 - A. The City will work collaboratively with the WRWC and identify any property to be acquired during the planning and design phases of the Project.
 - B. Displacement of individuals, families, businesses, non-profit organizations or farm operations that will require relocation assistance shall be performed in accordance with State procedures.
 - C. In the event the City must acquire property not under its custody or control for the Project, the City shall acquire the necessary right-of-way according to the State procedures below prior to the start of construction.
 1. The City must obtain an appraisal performed by a qualified appraiser certified in the State of Rhode Island unless an otherwise acceptable methodology to ensure just compensation is established. Appraisals and/or valuation methodologies are subject to review and approval by the State.
 2. The City shall obtain Temporary Easements or Right of Entry Agreements when it is necessary to access private property for any period of time in order to complete construction of the Project according to State procedures.
 3. The City must make a written offer to property owners at an amount not less than the appraisal value.
 4. The City will record and document all meetings with the property owners pertaining to the acquisition.
 5. The City will maintain documentation showing the property owner(s) have received compensation for land and easements necessary to construct the project, unless the owner has acknowledged the offer and waived compensation in writing. All documentation is subject to review and approval by the State.

6. The City will provide supporting documentation for reimbursement for acquisition costs according to State procedures.

D. Notwithstanding Paragraph "C", above, the City shall certify to the State that all improvements made as part of the Project are within public right-of-way and that no private properties, acquisitions, easements or other right-of-way permissions are required to complete the Project, prior to the authorization of State funds.

6. The City shall select a consultant to design and develop the bid documents for the Project according to Title 37, Chapter 2 of the Rhode Island General Laws and State procedures.

7. The City will select a Project Manager to administer the Project. Such administration will include but not be limited to the maintenance of a Project account, as well as processing invoices, change orders, and contract records. The City will maintain all financial records.

8. Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws of the State of Rhode Island, the State reserves the right to require a plan to ensure that one or more Minority Business Enterprises (MBE) as defined therein have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. The State shall not issue a notice to proceed to construction of the Project until such MBE Plan, if required, has been approved. The City and its contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of work under this Agreement.

A. This Project will be assigned an MBE goal. The State requires the submission of executed MBE subcontract Agreement(s) between the prime contractor and any MBE subcontractor(s) who will perform work under this Contract. These executed contract Agreements should be addressed to the Department's Office of Civil Rights for approval and include the executed MBE Utilization Form as the cover sheet for the MBE subcontracts. The MBE Verification of Payment Form is contained in Exhibit A. of this Agreement

9. The City will work with the State, if needed, to obtain an environmental determination for the Project according to State procedures. Construction of the project may only proceed after receipt of said environmental determination.

10. The City will construct the Project using the design approved by the State.

A. In awarding the construction contract to the lowest qualified bidder, the City shall use competitive bidding for the Project and shall comply with all provisions of Title 37 Chapter 2 of the Rhode Island General Laws.

B. The City shall engage on-call engineering services in charge of the engineering details of the Project during construction, subject to reimbursement by the State.

Said services shall have the responsibility for administration of satisfactory completion of the Project. This responsibility shall include:

1. Monitoring the rate of progress by the contractor on the Project and acceptable fulfillment of work by the Contractor.
 2. Ensuring that completed work by the contractor conforms to the contract documents.
 3. 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.
 4. Authority to make changes to quantities not greater than ten percent (10%) of the corresponding values in the contractor's proposal.
 5. 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 assistant(s) as mutually agreed upon with the State.
 6. Issuance of interpretations and clarifications of the contract documents; review and approval of shop drawings and samples as required.
 7. Receipt and review of inspections and tests to ensure compliance with the contract documents.
 8. Review of applications for payment and recommendation for payment based on whether the progress and quality of work is in accordance with the contract documents.
 9. Quarterly monitoring and reporting of MBB requirements.
 10. Preparing a reproducible set of as-built drawings.
- C. The State shall not participate in reimbursement of work through force account; such costs shall be the responsibility of the City.
- D. The City shall engage on call services to be responsible for ensuring that materials incorporated into the Project are obtained from State approved sources and are in conformance with State Standards and Specifications, subject to reimbursement by the State.
1. The City shall submit a Materials Testing Schedule based upon the State's Master Materials Testing Schedule to the State for review and approval.

2. 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.

3. The City shall obtain certificates of compliance and mill certifications in accordance with the approved Materials Testing Schedule.

4. The City must certify that all materials used as part of the Project comply with the design specifications established for the Project.

5. Contractor test results shall not be used for materials acceptance.

6. All sample shall be random samples.

7. Manufacturer certificates of compliance must accompany each shipment of product and must be received and accepted by the Resident Engineer prior to incorporating the product into the work. Under no circumstances will the State reimburse costs for items where a certificate of compliance is required and has not been received.

E. The City must certify that prevailing wage rates have been paid during 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. The Project shall be subject to construction inspections by the State. All findings must be satisfactorily addressed before final reimbursement by the State.

11. The General Program Requirements for reimbursement requests by the City are:

A. The City shall invoice the State for work completed by the contractor on the Project and the cost of the materials supplied by the contractor to the Project in accordance with State procedures.

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

"We hereby certify that the work performed by the contractor and the materials for which payment is being requested meet the requirements of the contract documents and approved change orders in all respects, except as noted below. We further certify that prevailing wage rates have been paid for construction and we are duly authorized to certify on behalf of the City.

12. Finalization and acceptance of the Project shall be performed by the State. The following items are required to finalize and close the Project:

- A. Final inspection report.
- B. Corrective action plan(s) and Punch List resolutions.
- C. Letter of Project acceptance certifying the Project has been completed in accordance with the Project documents.
- D. Verification of Payment Form.
- E. Prevailing Wage Rate Certification.
- F. Certification that all certificates of compliance and mill certifications are on file.

13. The Parties agree that no work associated with the relocation of utilities underground shall be subject to reimbursement as part of this Project.

14. The State reserves the right to have access to any documents, papers or other records of the City which are pertinent to the State funding award, in order to make audits, examinations, excerpts and transcripts. The right also includes timely and reasonable access to City personnel for the purpose of interview and discussion related to such documents.

15. Upon completion of the Project, the City will be responsible for the maintenance of the facilities constructed under this agreement in accordance with the plans and specifications developed for the Project at its own cost and expense.

16. The City will also remain responsible for the commitments agreed upon in the Agreement and Amendment One of the Northwest Bike Trail/Woonasquatucket River Bikeway Contract 1 executed on October 2, 2003 and Replacement of Pleasant Valley Parkway Bridge No. 777 Construction and Maintenance Agreement executed on April 8, 2015 and amended on March 21, 2016 (hereinafter the C&M).

- A. The State reserves the right to require the City to participate in cost sharing for any work constructed under the C&M removed and/or replaced by the Project.
- B. The terms and conditions for cost sharing will be subject to a future amendment to this Agreement.
- C. In the event the State and City fail to come to agreement on the terms and conditions for cost sharing on impacts to the assets covered under the C&M, the State reserves the right to provide written notice to the Project Manager placing

the Project on hold and all activity on the Project will cease until the State and the City come to an agreement on cost sharing.

D. The C&M is incorporated for reference as Exhibit A.

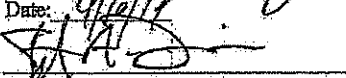
17. All costs billed under this Agreement are subject to audit. The City agrees to maintain all records pertaining to the costs incurred in performance of the Project and this Agreement for a period of three (3) years from the date of final payment and all other pending matters are closed.
18. The State reserves the right to terminate this Agreement if State funds are rescinded or not authorized.
19. This Agreement may not be altered or amended except by written agreement signed by all the Parties.
20. The Parties agree the Mayor shall take all necessary steps to receive authority from the City Council to enter into and execute this Agreement including but not limited to submission of this Agreement to the City Council for ratification and submission of proof of such authority to the State concurrent with execution of the Agreement.


IN WITNESS WHEREOF, the Rhode Island Department of Transportation, City of Providence and Woonasquatucket River Watershed Council have caused this Agreement to be executed by duly authorized officials on the _____ day of _____, 2017.

DEPARTMENT OF TRANSPORTATION

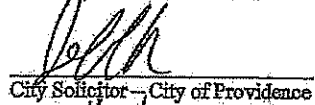
RECOMMENDED FOR APPROVAL

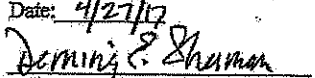

Administrator, Division of Planning
Date: 4/12/17


Administrator, Office of Transit
Date: 4/10/17

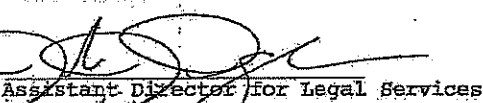

Chief Financial Officer
Date: 4/14/17

APPROVED AS TO FORM

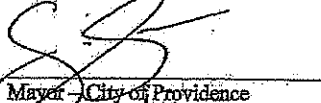

City Solicitor - City of Providence
Date: 4/27/17


Legal Counsel
Woonasquatucket River Watershed Council

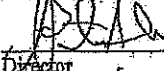
APPROVED AS TO FORM:



Assistant Director for Legal Services
Date: 4/18/17

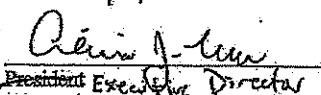
APPROVED:


Mayor - City of Providence
Date: 5/11/17

APPROVED


Director
Date: 4/21/17


President
W.R.W.C.
5/18/17


President Executive Director
Woonasquatucket River Watershed Council Board of Directors
Date: 5/17/2017

Woonasquatucket River Watershed Council

STATE OF R.I.

COUNTY OF Providence

In Providence, Rhode Island, on this 18 day of

May, 2017 before me personally appeared Roy Najeck, President of the Woonasquatucket River Watershed Council Board of Directors, to me known and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed in said capacity, and the free act and deed of said Woonasquatucket River Watershed Council.

Elizabeth Baptista
Notary Public

Print Name: Elizabeth Baptista

My Commission Expires 11/20/2017

CERTIFICATE OF AUTHORITY

I, Louis Lariviere, certify that I am the Secretary of the Woonasquatucket River Watershed Council in Providence, Rhode Island, the corporation described in and which executed the foregoing instrument with the State of Rhode Island; that the said corporation is organized under the laws of the State of Rhode Island; that the corporate seal affixed to said instrument is the seal of said corporation; that Roy Najecki, President of the Board of Directors who executed said instrument as President of the Board of Directors of said corporation was then President of the Board of Directors of said corporation and has been duly authorized to execute said instrument in behalf of said corporation; that I know the signature of said Roy Najecki and that the signature affixed to such instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said corporation, this 19th day of May 2017.

Louis R. Lariviere

John A. Quinn

Secretary

EXHIBIT B

NORTHWEST BIKE TRAIL /WOONASQUATUCKET RIVER BIKEWAY

CONTRACT-1

and

REPLACEMENT OF PLEASANT VALLEY PARKWAY BRIDGE NO. 777

CONSTRUCTION & MAINTENANCE AGREEMENT

MUNICIPAL HIGHWAY

FEDERAL FUNDS

by and between the

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

and the

CITY OF PROVIDENCE

AMENDMENT ONE

Amendment One made and entered into by and between the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (hereinafter called the STATE), through its Department of Transportation and the CITY OF PROVIDENCE (hereinafter called the MUNICIPALITY).

WHEREAS, the STATE and the MUNICIPALITY entered into a Construction and Maintenance Agreement for the NORTHWEST BIKE TRAIL /WOONASQUATUCKET RIVER BIKEWAY and REPLACEMENT OF PLEASANT VALLEY PARKWAY BRIDGE NO. 777 dated October 2, 2003 (attached hereto as Exhibit 1); and

WHEREAS, the STATE and the MUNICIPALITY wish to enter into this Amendment One to the Agreement amending the Description of the Project.

NOW THEREFORE, in consideration of the foregoing mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the STATE and the MUNICIPALITY agree as follows:

1. PAGE 3 -- DESCRIPTION - ITEMS 1-5 are hereby deleted in their entirety and replaced with the following:

DESCRIPTION:

1. Maintenance of the various roadways associated with this project (Dean Street, Pleasant Valley Parkway, Frohmanade Street, Kinsley Avenue, Providence Place, Bath Street, Acorn Street) will be the responsibility of the MUNICIPALITY and is

Rev. 02/16

IN CITY COUNCIL
APR 06 2017

READ
1
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED AND APPROVED
Don L. [Signature] CLERK

inclusive of providing striping, signing, pavement markings, snow removal, and regular sweeping to designate and maintain the bike lanes.

2. The MUNICIPALITY in accordance with the MUNICIPALITY's October 22, 2015 correspondence (Attached hereto as Exhibit 2) understands and agrees to the placement of signage, striping and pavement markings to designate the bike lanes installed under the Replacement of the Pleasant Valley Parkway Bridge No. 777 contract, and agrees to maintain these bike lanes as needed.
 3. The MUNICIPALITY understands and agrees that the traffic signal equipment located at the intersection of Dean Street/ Promenade and Dean Street/Kinsley Avenue and installed under the Bridge No. 777 contract will remain as property of the RI Department of Transportation.
 4. The MUNICIPALITY understands and agrees to the removal of the bike lane along the left-hand shoulder of Providence Place and Promenade Street from Dean Street to Park Street and restriping these streets so as to create a bike lane along the right shoulder of each within those limits.
-
2. The Mayor will take all necessary steps to receive authority from the City Council to enter into and execute this AMENDMENT ONE, including but not limited to submission of this AMENDMENT ONE to the City Council for ratification and submission of proof of such authority to the State.
 3. All other provisions of the AGREEMENT shall remain in full force and effect.

THIS SPACE INTENTIONALLY
LEFT BLANK

IN WITNESS WHEREOF, the PARTIES have caused this AMENDMENT ONE to be executed by their duly authorized officials as of the date last written below.

Recommended for Approval:
DEPARTMENT OF TRANSPORTATION:

David W. Fish
David Fish, P.E.
Acting Chief Engineer
Department of Transportation

Date: 3-16-16

MUNICIPALITY:

William Bombard
William Bombard
City Engineer
City of Providence

Date: _____

Approved as to form:

[Signature]
Executive Counsel
Department of Transportation

Date: 3/16/16

[Signature]
City Solicitor
City of Providence

Date: _____

Approved:

Peter Alvin
Director Peter Alvin, P.E.
Department of Transportation

Date: 3/21/16

[Signature]
Mayor
City of Providence

Date: 12/21/16

Examined and Approval:

Division Administrator
U.S. Department of Transportation
Federal Highway Administration

Date: _____

Exhibit #1

Design By L. J. D.

NORTHWEST BIKE TRAIL / WOONASQUATUCKET RIVER BIKEWAY

CONTRACT-1

CONSTRUCTION & MAINTENANCE AGREEMENT

MUNICIPAL HIGHWAY

FEDERAL FUNDS

by and between the

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

and the

CITY OF PROVIDENCE

AGREEMENT entered into by and between the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (hereinafter called the STATE), through its Department of Transportation and the CITY OF PROVIDENCE (hereinafter called the MUNICIPALITY).

WHEREAS the STATE, in cooperation with the MUNICIPALITY, has selected the above-referenced Project in PROVIDENCE, RHODE ISLAND for improvements under the provisions established in the Federal-Aid Policy Guide (FAPG), of the United States Department of Transportation, Federal Highway Administration, and

WHEREAS the STATE will accomplish said improvements with funds apportioned to the STATE under the Federal-Aid Highway Act, as amended and supplemented, and from other sources available for the purpose, subject, however, to various conditions including that the MUNICIPALITY shall provide for the proper maintenance after completion of the improvements,

NOW THEREFORE, the STATE and the MUNICIPALITY hereby agree as follows:

SECTION I - GENERAL PROVISIONS

1. The STATE, through its Contractor, will construct the improvements in accordance with the Plans and Specifications for the Project.
2. The MUNICIPALITY will allow the STATE to enter onto its property for purposes of constructing the Project.

3. Prior to construction of the Project, the MUNICIPALITY will remove, by its own forces any and all municipally-owned materials including but not limited to traffic signal systems, granite curb and directional/regulatory/warning signs, which the MUNICIPALITY desires salvaged and stockpiled. Should the MUNICIPALITY fail to remove said materials, the MUNICIPALITY will reimburse the STATE for all costs incurred relative to the handling, hauling and disposal of said materials to the MUNICIPALITY's designated storage site.

4. Upon completion of the Project, the MUNICIPALITY will:

(a) regulate the parking, standing, moving and guiding operations of vehicles and pedestrians in conformance with the specifications of the approved plans for the Project;

(b) conform to the latest edition of the Manual on Uniform Traffic Control Devices and Standards relative to all traffic control signals, flashing beacons, traffic islands, regulatory or warning signs, pavement markings, or other traffic control devices;

(c) enforce traffic regulations established in accordance with this Agreement and for the traffic devices installed in connection therewith;

(d) enact any further regulations necessary to assure the preferential, safe and efficient movement of traffic in keeping with the through traffic service to be provided by this Project. Dated and attested copies of amendments to the Municipal Ordinance necessary for the enforcement of any specific provisions will be forwarded by the MUNICIPALITY to the STATE. All necessary Municipal Ordinances applicable to this Project shall be in effect prior to completion of construction; and

(e) maintain all portions of the Project, in accordance with the RIDOT Plans and Specifications, at its own cost and expense, after construction is completed and will make ample provision each year for such maintenance.

5. All work performed under this Project is subject to the approval and inspection of the STATE and Federal authorities in accordance with the provisions of the Federal-Aid Highway Act and the regulations, including the Federal-Aid Policy Guide (FAPG), as aforementioned, which are hereby made a part of this Agreement by reference.

6. This Agreement may be amended only after the prior approval of the Division Administrator, Federal Highway Administration has been obtained as to such proposed amendment.

7. (a) The MUNICIPALITY will use or allow the use of for transportation purposes only the space below a plane sixteen feet, four inches (16' - 4") above the existing grade of the highway or the minimum clearance plus four inches as approved by the STATE, except the space necessary for foundations, vertical support facilities and utility and mechanical systems. Any other space above and below the highway may be used for other than transportation purposes only with the approval of the STATE and Federal authorities and in accordance with the provisions of the Federal-Aid Highway Act and the regulations adopted thereunder.

7. (b) The STATE reserves the right to require the execution of an Agreement between the STATE and the MUNICIPALITY or a third party responsible for developing and operating the air space for any use of the space above and below the highway for other than transportation purposes and said Agreement shall be submitted to the FHWA for approval.


Description:

1. Maintenance of the various roadways associated with this project will be the responsibility of the City of Providence and is inclusive of providing striping to designate the bike lane and also continuing to provide bollards at all times.
2. The City of Providence understands and agrees to the elimination of one westbound travel lane on Promenade Street from Park Street to Bath Street so as to create parallel parking on the northern shoulder and a bike path on the southern shoulder.
3. The City of Providence understands and agrees to the elimination of parallel parking on the southern shoulder off Kinsley Avenue from Eagle Street to Dean Street so as to create a bike path.
4. The City of Providence understands and agrees to the elimination of one eastbound travel/stacking lane on Kinsley Avenue at the intersection with Dean Street so as to create a bike path. The remaining eastbound travel lane will not only provide through movement, but also left turns.
5. The City of Providence understands the removal of light standard foundations, light standards and luminaires from Promenade Street, Dean Street, Kinsley Avenue and Providence Place will be those exclusively shown on the Plans. The Contractor who is awarded the construction job will be stockpiling them at the Providence Department of Public Works, 60 Ernest Street.

Design: RCL No. 93-57

IN WITNESS WHEREOF, the STATE and the MUNICIPALITY have caused this
AGREEMENT to be executed by their duly authorized officials as of the 3rd day of October,
2003.

Recommended for Approval:


Chief Engineer
Department of Transportation

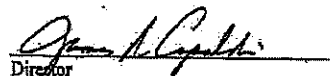
City of Providence:

By: 
Mayor

Approved as to form:


Chief Legal Counsel
Department of Transportation

Approved:


Director
Department of Transportation

N.A.
Division Administrator
U.S. Department of Transportation
Federal Highway Administration

NORTHWEST BIKE TRAIL / WOONASQUATUCKET RIVER BIKEWAY
CONTRACT-
CONSTRUCTION & MAINTENANCE AGREEMENT
by and between the
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
and the
CITY OF PROVIDENCE

Exhibit #2



Mayor of Providence

Jorge O. Elorza

October 22, 2015

Director Peter Alitti
Rhode Island Department of Transportation
Two Capitol Hill
Providence, RI 02903

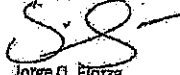
Dear Director Alitti,

I am writing to express my support for the Rhode Island Department of Transportation's efforts to make the Pleasant Valley Parkway Bridge over the Woonasquatucket River safer for bicyclists by providing bicycle lanes on the bridge. The bridge provides a crucial connection for bicyclists between Downtown, Federal Hill, and the West End to the entire northwest quadrant of the City. I am committed to improving bicycle infrastructure throughout the City of Providence, particularly along key corridors that have the opportunity to connect neighborhoods and important destinations. Based on public feedback and concern, the Pleasant Valley Parkway-Dean Street corridor was identified by the Providence Bicycle and Pedestrian Advisory Commission as a priority corridor for bicycle infrastructure improvements at a public forum earlier this year. As a result of feedback received at that forum, Department of Planning and Development will soon be updating the City's Bicycle Master Plan to plan for and prioritize the bicycle infrastructure improvements that are needed citywide. This update will include recommendations for improvements to the entire Pleasant Valley Parkway-Dean Street corridor to connect RIDOT's investment in bicycle infrastructure on the bridge to the north and south.

Moving forward, I request that RIDOT work closely with the Providence Department of Planning and Development and the Providence community to integrate more robust bicycle and pedestrian infrastructure on state roadways throughout the City, including the recommendations that emerge from the updated Providence Bicycle Master Plan.

I look forward to working in close partnership with RIDOT to make our state more bike-friendly.

Sincerely,


Jorge O. Elorza
Mayor

City Hall, 25 Dorrance Street, Providence, RI 02903
Phone (401) 421-7740 Fax (401) 274-8240



CITY OF PROVIDENCE

Joige D. Elorza, Mayor

Date: April 20, 2017

Jessica Rodas
Rhode Island Department of Transportation
Bridge Design
Two Capitol Hill
Providence, RI 02903

Re: Northwest Bike Trail/Woonasquatucket River Bikeway Contract 1 and Replacement of Pleasant Valley Parkway Bridge 777 - CONSTRUCTION AND MAINTENANCE AGREEMENT AMENDMENT ONE

Dear Jessica:

Attached is an original of the Northwest Bike Trail/Woonasquatucket River Bikeway Contract 1 and Replacement of Pleasant Valley Parkway Bridge 777 - CONSTRUCTION AND MAINTENANCE AGREEMENT AMENDMENT ONE with all City signatures and approvals.

Very Truly Yours

Natale D. Urso, PE, PTOE
Traffic Engineer

DEPARTMENT OF PUBLIC WORKS

700 Allens Avenue Providence, Rhode Island 02905

401.467.7950 ph - 401.941.2567 fax

www.providenceri.com

Design or Construction R.I. Contract No.: 2001-BB-011
Design or Construction R.I. Federal-Aid Project No.: BHO-BCDR (010)
**CONSTRUCTION & MAINTENANCE AGREEMENT/MUNICIPALITY
FEDERAL FUNDS**

by and between the
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
and the
CITY OF PROVIDENCE

for
Replacement of Pleasant Valley Parkway

AGREEMENT entered into by and between the State of Rhode Island and Providence Plantations (the "STATE"), through its Department of Transportation and the City of Providence (the "MUNICIPALITY").

WHEREAS the STATE, in cooperation with the MUNICIPALITY, has selected the above-referenced Project in the City of Providence, specifically Replacement of Pleasant Valley Parkway superstructure replacement (further described in the attached Project Description and referred to as the "PROJECT"), for improvements under the provisions established by the Federal Transportation Acts and policy of the United States Department of Transportation, Federal Highway Administration, and

WHEREAS the STATE will accomplish said improvements with funds apportioned to the STATE under the Federal-Aid Highway Act, as amended and supplemented, and from other sources available for the purpose, subject, however, to various conditions including that the MUNICIPALITY shall provide for the proper maintenance after completion of the improvements.

NOW THEREFORE, the STATE and the MUNICIPALITY hereby agree as follows:

1. The STATE will advertise and award the Project in conformance with 23 CFR Part 635 and the provisions of Title 37, Chapter 2 of the Rhode Island General Laws. Thereafter, the STATE shall issue a Notice to Proceed to its contractor (the "Contractor"), who will construct the improvements in accordance with the Plans and Specifications for the Project.
2. After issuance of the Notice to Proceed to the Contractor, the MUNICIPALITY will allow the Contractor to enter onto its property, where applicable, for purposes of constructing the Project.
3. The State will modify the sidewalks, including the filter boxes and pipes embedded in the sidewalk, remove and replace the street lights within the project limits.

3. Upon completion of the Project, the MUNICIPALITY will:

- (a) maintain the road altered during construction of the PROJECT within the State Right-of-Way in conformance with Chapters 24-8, Section 24-8-15 Title 24 of the Rhode Island General Laws and maintain in conformance with 23 U.S.C. §116 and ADA/Section 504 requirements, all pedestrian facilities built with federal funds under this Agreement. This maintenance obligation includes reasonable snow and ice removal efforts, allowing only temporary interruptions in service or access;
- (b) regulate the parking, standing, moving and guiding operations of vehicles and pedestrians in conformance with the specifications of the approved plans for the Project and chapters 12 through 27 of Title 31 of the Rhode Island General Laws;
- (c) conform to the latest edition of the Manual on Uniform Traffic Control Devices and Standards relative to all traffic control signals, flashing beacons, traffic islands, regulatory or warning signs, pavement markings, or other traffic control devices;
- (d) enforce traffic regulations established in accordance with this AGREEMENT;
- (e) enact any further regulations necessary to assure the preferential, safe and efficient movement of traffic in keeping with the through traffic service to be provided by this Project. Dated and attested copies of amendments to the Municipal Ordinance necessary for the enforcement of any specific provisions will be forwarded by the MUNICIPALITY to the STATE. All necessary Municipal Ordinances applicable to this Project shall be in effect prior to completion of construction; and
- (f) maintain all landscaping, sidewalk, ornamental street lighting, drainage systems, filter boxes and pipes installed during construction of this Project within the City Right-of-Way;
- (g) maintain the Project listed above in accordance with the Project Plans and Specifications, at its own cost and expense, and will make ample provision each year for such maintenance.

4. All work performed under this Project is subject to the approval and inspection of the STATE and Federal authorities in accordance with the provisions of the Federal-Aid Highway Acts and the regulations, as aforementioned, which are hereby made a part of this AGREEMENT by reference.

5. The MUNICIPALITY will use or allow the use of for transportation purposes only the space below a plane sixteen feet, four inches (16' - 4") above the existing grade of the highway or the minimum clearance plus four inches as approved by the STATE, except the space necessary for foundations, vertical support facilities and utility and mechanical systems. Any other space above and below the highway may be used for other than transportation purposes only with the approval of the STATE and Federal authorities and in accordance with the provisions of the Federal-Aid Highway Acts and the

regulations adopted thereunder.

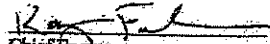
6. The STATE reserves the right to require the execution of an Agreement between the STATE and the MUNICIPALITY or a third party responsible for developing and operating the air space for any use of the space above and below the highway for other than transportation purposes and said Agreement shall be submitted to the FHWA for approval.

7. The MUNICIPALITY must notify the STATE's Maintenance Division at least 24 hours in advance of entering a traffic signal controller cabinet. The STATE's representative must be on site during maintenance of the Emergency Vehicle Priority Control System.

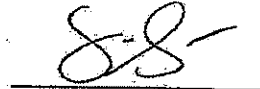
8. The Mayor will take all necessary steps to receive authority from the City Council to enter into and execute this AGREEMENT including, but not limited to, submission of this AGREEMENT to the City Council for ratification and submission of proof of such authority to the STATE prior to project advertisement.

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed by their duly authorized officials as of the date last written below.


Recommended for Approval:
DEPARTMENT OF TRANSPORTATION


Chief Engineer
Department of Transportation
Date: 1/7/15

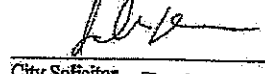
MUNICIPALITY


Mayor
City of Providence
Date: 4/8/15

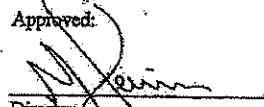
Approved as to form:


Executive Counsel
Department of Transportation
Date: 4/7/15

Approved as to form:


City Solicitor
Date: 3/12/15

Approved:


Director
Department of Transportation
Date: 1/8/15

Examined and Approval:

N/A
Division Administrator
U.S. Department of Transportation
Federal Highway Administration
Date:

PROJECT DESCRIPTION
Pleasant Valley Parkway Bc.777

This Project is located in the County of Providence, City of Providence, Rhode Island, on Pleasant Valley Parkway. The bridge work shall include the replacement of a superstructure, as a 2-span structure over Woonasquatucket River. The work for the bridge shall include, but not be limited to: bridge concrete deck and sidewalk, Precast Prestressed NEXT (New England Extreme Tee) Beams, elastomeric bearings, four-bar steel bridge railing, granite curb, concrete pier cap, concrete abutment stem, wingwalls, end posts, four-bar pedestrian railing and supports, utility conduits relocation, lighting, rip-rap installation, temporary working platform, temporary utility support bridge, temporary earth retaining system and deck joint installation. The work also includes demolition of the entire existing bridge superstructure, pier cap and partial demolition and sawcutting of the existing abutment stem to the limits shown on the contract drawings. All bridge work will be performed under a complete bridge closure.

The highway work shall include but is not limited to clearing and grubbing, full depth reconstruction of pavement, leveling course, temporary island pavement, excavation and embankment, erosion control, trimming and fine grading, sawcutting pavement, modifications to the existing storm drainage system, construct bio-retention pond, roadway lighting, new street lighting, temporary and permanent traffic signal systems, filter boxes, and filter pipes embedded in the sidewalk, modifications to sidewalk, curbing, dust control, uniform traffic persons, flagpersons, temporary construction signs, field office, mobilization, maintenance and protection of traffic, signs, traffic detour, pavement markings, loam & seed, landscape mulching, plantings, handling, hauling, stockpiling, and management of contaminated soil, and other incidentals completed and accepted as necessary to complete the work of this contract as required by the Engineer.

SUBRECIPIENT AGREEMENT

By and Among

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

CITY OF PROVIDENCE

And the

WOONASQUATUCKET RIVER WATERSHED COUNCIL

For the

PROVIDENCE WOONASQUATUCKET GREENWAY CORRIDOR ENHANCEMENTS

AGREEMENT made and entered into by and among the State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the State), the City of Providence (hereinafter the City) utilizing its Registered DUNS Number 797675337, and the Woonasquacket River Watershed Council (hereinafter the WRWC).

WHEREAS, the State, the City and WRWC (hereinafter the Parties) entered into an Agreement (hereinafter the Initial Agreement) on the design, construction and maintenance of the Providence Woonasquacket Greenway Corridor Enhancements (hereinafter the Project) on May 17, 2017; and

WHEREAS, the Project was originally funded with 100% State funds; and

WHEREAS, the State has determined it is necessary to convert the funding of the Project to include Federal funds, make changes to the funding sources and the approach to construction of the Project; and

WHEREAS, the Parties further agree it is in the best interests of the Project to terminate the existing Agreement and provide for a new Agreement; and

WHEREAS, the funds to be included for use on the Project are administered by the Federal Highway Administration under Catalog of Federal Domestic Assistance (CFDA) 20.205, and

WHEREAS, the State has approved and awarded funds in the Transportation Improvement Program (TIP) under TIP ID Number 5178; and

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

WHEREAS, the State has agreed to contribute up to and not exceeding Five Million Nine Hundred Seventy-Five Thousand Dollars (\$5,975,000) in funds to the Project;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual obligations herein, the Parties agree as follows:

1. In accordance with Paragraph 18 of the Initial Agreement, incorporated herein as Exhibit A, the Initial Agreement is hereby terminated.
2. The Project will consist of the design and construction of a separated bicycle/pedestrian route along the Woonasquatucket River from Eagle Square to Providence Place; and, if funding allows, additional bicycle/pedestrian connections from Eagle Square to the existing Woonasquatucket River Greenway via the General Electric site along with a connection from Delanie Street to Riverside Park via the Contech Medical Property.
3. The authorized start date of the Project shall be the design purchase order date. The Project performance end date will be December 31, 2024.
4. The City will be responsible for all costs associated with design of the Project and for obtaining all local, state, and federal environmental permits.
 - A. The State will reimburse the City up to and not exceeding Nine Hundred Forty-one Thousand Nine Hundred Fifty-three Dollars and Fifty-five Cents (\$941,953.55) for the costs of design; of this amount Eighty Percent (80%) or up to Seven Hundred Fifty-three Thousand Five Hundred Sixty-Two Dollars and Eighty-four Cents (\$753,562.84) is federally funded to Twenty Percent (20%) or up to One Hundred Eighty-eight Thousand Three Hundred Ninety Dollars and Seventy-one Cents (\$188,390.55) is state funded; costs in excess of said reimbursement are the responsibility of the City.
 - B. Any right-of-way actions identified during the design phase of the Project shall be subject to a future amendment to this Agreement. The City shall not proceed with any right-of-way action prior to an amendment to this Agreement and authorization to proceed from the State.
 - C. Construction of the Project will be subject to a future amendment to this Agreement.
 - D. Total reimbursement for design, right-of-way, utility adjustments, environmental permitting and construction by the State for the Project cannot exceed Five Million Nine Hundred Seventy Five Thousand Dollars (\$5,975,000); of this amount up to eighty percent (80%) or Four Million Seven Hundred and Eighty Thousand Dollars (\$4,780,000) is federally funded and up to twenty percent (20%) or One Million One Hundred and Ninety-Five Thousand Dollars (\$1,195,000) is State funded; costs in excess of said reimbursement are the responsibility of the City.

5. The City shall select a Project Manager to administer the Project. Such administration will include but not be limited to the maintenance of a Project account, as well as processing invoices, change orders and contract records. The City will maintain all financial records.
6. The City will select a consultant to design the Project and develop the bid documents.
 - A. In selecting the consultant, the City will prepare a Request for Proposals (RFP) seeking an engineering consultant to develop the design and bid documents for the Project. The RFP will include the purpose of the Project; the scope of services, description of work, product to be provided, request for a budget and schedule for completion of the Project, as well as the qualifications of the applicant.
 - B. The City will submit the RFP to the State for review and approval. Upon such approval, the City will advertise and issue the RFP in accordance with Federal statutes, regulations and procedures.
 - C. All procurement actions by the City will comply with 23 CFR Part 172.7 and 23 USC 112 (b) (2). Federal reimbursement will be limited to the federal share of the costs allowable under 48 CFR Part 31 (Federal Acquisition Regulations).
7. The City 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 actions nor construction of the Project may proceed without receipt of said Environmental Determination.
8. The following are the General Program Requirements for the submission of reimbursement requests by the City.
 - A. The City shall invoice the State for work completed by the consultant. All invoices shall be sent directly to:

Department of Transportation
Attn: Accounts Payable
Two Capitol Hill
Providence, RI 02903
 - B. Further General Program Requirements for potential right-of-way and construction phases of the Project shall be the subject of a future amendment to this Agreement.
9. The City will design the Project and develop the bid documents in accordance with all State design standards and policies. The WRWC shall review the design plans and documents and provide written approval at each stage of design.

- A. The City 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 be 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. 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 full responsibility with respect to errors and omissions.
10. 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 FFATA and State of Rhode Island policy, all recipients and sub-recipients of federal funds must have a valid DUNS number¹ and be registered with the ***System for Award Management***.²
 - B. The City 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 DUNS number, and select "Export PDF." Submit SAM Search Results PDF form with this Agreement.
 - C. The City is required to maintain active registration in the ***System for Award Management***. Registration must be reviewed and updated on a yearly basis prior to expiration date.
 - D. In accordance with state regulations and procedures, the City will also locate the Rhode Island Office of Management and Budget Sub-Award Reporting Worksheet and fill out Section 2, sign and submit to the State prior to execution of this Agreement.
11. The City 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 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 audit period. Within 6 months of RIDOT's receipt of the audit, the Department will issue a management decision on the audit findings.

¹ To obtain a DUNS number, go to <https://iupdate.dnb.com/iUpdate/companylookup.htm>

² To register with the System for Award Management, go to www.sam.gov

-
- A. Conversely, if during any fiscal year the City 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 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 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.
12. The Parties agree that no work associated with the relocation of utilities underground shall be subject to reimbursement as part of this Project.
13. The State reserves the right to have access to any documents, papers or other records of the City which are pertinent to the State funding award to make audits, examinations, excerpts and transcripts. This right also includes timely and reasonable access to City personnel for the purpose of interview and discussion related to such documents.
14. Upon completion of the Project, the City will be responsible for the maintenance of the facilities constructed as part of the Project at its own cost and expense. The Parties agree that further detail on the City's maintenance responsibilities will be subject to a future amendment to this Agreement
15. The City will remain responsible for the commitments agreed upon in Amendment One of the Northwest Bike Trail/Woonasquatucket River Bikeway Contract 1 executed on October 2, 2003 and Replacement of the Pleasant Valley Parkway Bridge No. 777 Construction and Maintenance Agreement executed on April 8, 2015 and amended on March 21, 2016, incorporated into this Agreement as Exhibit B (hereinafter Previous Commitments).
- A. The State reserves the right to require the City to participate in cost sharing for any work constructed as part of these Previous Commitments removed and/or replaced by the Project.

-
- B. The terms and conditions for cost sharing shall be subject to a future amendment to this Agreement.
 - C. In the event the State and the City fail to come to agreement on the terms and conditions for cost sharing on impacts to the assets covered under these Previous Commitments, the State reserves the right to provide written notice to the Parties placing the Project on hold until the Parties come to an agreement on cost sharing.
16. All costs billed under this Agreement are subject to audit. The City agrees to maintain all records pertaining to the costs incurred in the performance of the Project and this Agreement for a period of three years from the date of final payment and all other pending matters are closed.
17. The State reserves the right to terminate this Agreement if funds are rescinded or not authorized.
18. This Agreement may not be altered or amended except by written agreement signed by all the Parties.
19. The parties agree the Mayor shall take all necessary steps to receive authority from the City Council to enter into an execute this Agreement, including but not limited to submission of this Agreement to the City Council for ratification and submission of proof of such authority to the State concurrent with execution of the Agreement.

IN WITNESS WHEREOF, the Rhode Island Department of Transportation, the City of Providence and the Woonasquatucket River Watershed Council have caused this Agreement to be executed by duly authorized officials on the ____ day of ____, 2018.

DEPARTMENT OF TRANSPORTATION
RECOMMEND FOR APPROVAL

David W. Fook
Administrator, Division of Project Management
Date: 12-10-18

[Signature]
Administrator, Office of Transit
Date: 12/7/18

Karen Doyle
Chief Financial Officer
Date: 12/18/18

APPROVED AS TO FORM

CITY OF PROVIDENCE & WRWC
APPROVED AS TO FORM

[Signature]
City Solicitor – City of Providence
Date: 1/9/19

Deming E. Sherman
Legal Counsel – WRWC
Date: 12/26/18

APPROVED
[Signature]
Mayor – City of Providence
Date: 1/19/19

APPROVED

[Signature]
Assistant Director for Legal Services
Date: 12/17/18

APPROVED
[Signature]
Director
Date: 12/21/18

[Signature]
Executive Director – WRWC
Date: 12/26/2018

[Signature]
President, WRWC
Date: 12/27/18

Woonasquatucket River Watershed Council

STATE OF Rhode Island

COUNTY OF Providence

In Providence, Rhode Island, on this 27th day of

December 2018 before me personally appeared Roy Najecki, President of the Woonasquatucket River Watershed Council Board of Directors, to me known and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed in said capacity, and the free act and deed of said Woonasquatucket River Watershed Council.

Elizabeth M. Baptista
Notary Public

Print Name: Elizabeth M. Baptista

My Commission Expires 9/15/2020

CERTIFICATE OF AUTHORITY

I, Zane Silva, certify that I am the Secretary of the Woonasquatucket River Watershed Council in Providence, Rhode Island, the corporation described in and which executed the foregoing instrument with the State of Rhode Island; that the said corporation is organized under the laws of the State of Rhode Island; that the corporate seal affixed to said instrument is the seal of said corporation; that Roy Najecki, President of the Board of Directors who executed said instrument as President of the Board of Directors of said corporation was then President of the Board of Directors of said corporation and has been duly authorized to execute said instrument in behalf of said corporation; that I know the signature of said Roy Najecki and that the signature affixed to such instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
corporate seal of said corporation, this 2nd day of Jan 2018.



Zane Silva

Secretary

EXHIBIT A

STATE FUNDED SUBRECIPIENT AGREEMENT

By and Among

**RHODE ISLAND DEPARTMENT OF TRANSPORTATION,
CITY OF PROVIDENCE**

And the

WOONASQUATUCKET RIVER WATERSHED COUNCIL

For the

PROVIDENCE WOONASQUATUCKET GREENWAY CORRIDOR ENHANCEMENTS

AGREEMENT made and entered into by and among the State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the State), the City of Providence (hereinafter the City) and the Woonasquatucket River Watershed Council (hereinafter the WRWC).

WHEREAS, the State, through its Metropolitan Planning Organization (MPO) has included the Providence Woonasquatucket Greenway Corridor Enhancements (hereinafter the Project) in the approved Transportation Alternatives Program; and

WHEREAS, the State, the City and the WRWC (hereinafter the Parties) have agreed to transfer responsibility for implementation of the Project to the City, subject to reimbursement by the State with State funds; and

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

WHEREAS, the State has agreed to contribute Five Million Nine Hundred and Seventy Five Thousand Dollars in State funding (\$5,975,000) for the design and construction of the Project.

NOW THEREFORE, in consideration of the foregoing premises and the mutual obligations herein, the Parties agree as follows:

1. The Project will consist of the study, design and construction of a separated bicycle/pedestrian route along the Woonasquatucket River from Eagle Square to Providence Place; and if funding allows; additional bicycle/pedestrian connections from Eagle Square to the existing Woonasquatucket River Greenway via the General Electric site along with a connection from Delaine Street to Riverside Park via the Contech Medical property.

2. The authorized start date of the Project for reimbursement purposes shall be the design purchase order date and the construction purchase order date, respectively. The Project performance end date will be December 2022.
3. The Parties agree the City will be responsible for design and construction of the Project in accordance with the plans and specifications approved by the State.
4. The City will be responsible for all costs associated with the design and construction of the Project; the State will reimburse the City up to and not exceeding Five Million Nine Hundred and Seventy Five Thousand Dollars (\$5,975,000) in State funds; costs in excess of said reimbursement are the responsibility of the City.
5. The Parties agree that based on the description of the Project, there is potential for property acquisitions, subject to State procedures.
 - A. The City will work collaboratively with the WRWC and identify any property to be acquired during the planning and design phases of the Project.
 - B. Displacement of individuals, families, businesses, non-profit organizations or farm operations that will require relocation assistance shall be performed in accordance with State procedures.
 - C. In the event the City must acquire property not under its custody or control for the Project, the City shall acquire the necessary right-of-way according to the State procedures below prior to the start of construction.
 1. The City must obtain an appraisal performed by a qualified appraiser certified in the State of Rhode Island unless an otherwise acceptable methodology to ensure just compensation is established. Appraisals and/or valuation methodologies are subject to review and approval by the State.
 2. The City shall obtain Temporary Easements or Right of Entry Agreements when it is necessary to access private property for any period of time in order to complete construction of the Project according to State procedures.
 3. The City must make a written offer to property owners at an amount not less than the appraisal value.
 4. The City will record and document all meetings with the property owners pertaining to the acquisition.
 5. The City will maintain documentation showing the property owner(s) have received compensation for land and easements necessary to construct the project, unless the owner has acknowledged the offer and waived compensation in writing. All documentation is subject to review and approval by the State.

6. The City will provide supporting documentation for reimbursement for acquisition costs according to State procedures
- D. Notwithstanding Paragraph "C", above, the City shall certify to the State that all improvements made as part of the Project are within public right-of-way and that no private properties, acquisitions, easements or other right-of-way permissions are required to complete the Project, prior to the authorization of State funds.
6. The City shall select a consultant to design and develop the bid documents for the Project according to Title 37, Chapter 2 of the Rhode Island General Laws and State procedures.
7. The City will select a Project Manager to administer the Project. Such administration will include but not be limited to the maintenance of a Project account, as well as processing invoices, change orders, and contract records. The City will maintain all financial records.
8. Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws of the State of Rhode Island, the State reserves the right to require a plan to ensure that one or more Minority Business Enterprises (MBE) as defined therein have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. The State shall not issue a notice to proceed to construction of the Project until such MBE Plan, if required, has been approved. The City and its contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of work under this Agreement.
 - A. This Project will be assigned an MBE goal. The State requires the submission of executed MBE subcontract Agreement(s) between the prime contractor and any MBE subcontractor(s) who will perform work under this Contract. These executed contract Agreements should be addressed to the Department's Office of Civil Rights for approval and include the executed MBE Utilization Form as the cover sheet for the MBE subcontracts. The MBE Verification of Payment Form is contained in Exhibit A of this Agreement
9. The City will work with the State, if needed, to obtain an environmental determination for the Project according to State procedures. Construction of the project may only proceed after receipt of said environmental determination.
10. The City will construct the Project using the design approved by the State.
 - A. In awarding the construction contract to the lowest qualified bidder, the City shall use competitive bidding for the Project and shall comply with all provisions of Title 37 Chapter 2 of the Rhode Island General Laws.
 - B. The City shall engage on-call engineering services in charge of the engineering details of the Project during construction, subject to reimbursement by the State.

Said services shall have the responsibility for administration of satisfactory completion of the Project. This responsibility shall include:

1. Monitoring the rate of progress by the contractor on the Project and acceptable fulfillment of work by the Contractor.
 2. Ensuring that completed work by the contractor conforms to the contract documents.
 3. 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.
 4. Authority to make changes to quantities not greater than ten percent (10%) of the corresponding values in the contractor's proposal.
 5. 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 assistant(s) as mutually agreed upon with the State.
 6. Issuance of interpretations and clarifications of the contract documents; review and approval of shop drawings and samples as required.
 7. Receipt and review of inspections and tests to ensure compliance with the contract documents.
 8. Review of applications for payment and recommendation for payment based on whether the progress and quality of work is in accordance with the contract documents.
 9. Quarterly monitoring and reporting of MBE requirements.
 10. Preparing a reproducible set of as-built drawings.
- C. The State shall not participate in reimbursement of work through force account; such costs shall be the responsibility of the City.
- D. The City shall engage on call services to be responsible for ensuring that materials incorporated into the Project are obtained from State approved sources and are in conformance with State Standards and Specifications, subject to reimbursement by the State.
1. The City shall submit a Materials Testing Schedule based upon the State's Master Materials Testing Schedule to the State for review and approval.

2. 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.
 3. The City shall obtain certificates of compliance and mill certifications in accordance with the approved Materials Testing Schedule.
 4. The City must certify that all materials used as part of the Project comply with the design specifications established for the Project.
 5. Contractor test results shall not be used for materials acceptance.
 6. All sample shall be random samples.
 7. Manufacturer certificates of compliance must accompany each shipment of product and must be received and accepted by the Resident Engineer prior to incorporating the product into the work. Under no circumstances will the State reimburse costs for items where a certificate of compliance is required and has not been received.
- E. The City must certify that prevailing wage rates have been paid during 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. The Project shall be subject to construction inspections by the State. All findings must be satisfactorily addressed before final reimbursement by the State.
11. The General Program Requirements for reimbursement requests by the City are:
- A. The City shall invoice the State for work completed by the contractor on the Project and the cost of the materials supplied by the contractor to the Project in accordance with State procedures.
 - B. The City shall submit reimbursement requests with a cover letter signed by the Project Manager containing the following language and provisions:

 "We hereby certify that the work performed by the contractor and the materials for which payment is being requested meet the requirements of the contract documents and approved change orders in all respects, except as noted below. We further certify that prevailing wage rates have been paid for construction and we are duly authorized to certify on behalf of the City.

12. Finalization and acceptance of the Project shall be performed by the State. The following items are required to finalize and close the Project:
- A. Final inspection report.
 - B. Corrective action plan(s) and Punch List resolutions.
 - C. Letter of Project acceptance certifying the Project has been completed in accordance with the Project documents.
 - D. Verification of Payment Form.
 - E. Prevailing Wage Rate Certification.
 - F. Certification that all certificates of compliance and mill certifications are on file.
13. The Parties agree that no work associated with the relocation of utilities underground shall be subject to reimbursement as part of this Project.
14. The State reserves the right to have access to any documents, papers or other records of the City which are pertinent to the State funding award, in order to make audits, examinations, excerpts and transcripts. The right also includes timely and reasonable access to City personnel for the purpose of interview and discussion related to such documents.
15. Upon completion of the Project, the City will be responsible for the maintenance of the facilities constructed under this agreement in accordance with the plans and specifications developed for the Project at its own cost and expense.
16. The City will also remain responsible for the commitments agreed upon in the Agreement and Amendment One of the Northwest Bike Trail/Woonasquatucket River Bikeway Contract 1 executed on October 2, 2003 and Replacement of Pleasant Valley Parkway Bridge No. 777 Construction and Maintenance Agreement executed on April 8, 2015 and amended on March 21, 2016 (hereinafter the C&M).
- A. The State reserves the right to require the City to participate in cost sharing for any work constructed under the C&M removed and/or replaced by the Project.
 - B. The terms and conditions for cost sharing will be subject to a future amendment to this Agreement.
 - C. In the event the State and City fail to come to agreement on the terms and conditions for cost sharing on impacts to the assets covered under the C&M, the State reserves the right to provide written notice to the Project Manager placing

the Project on hold and all activity on the Project will cease until the State and the City come to an agreement on cost sharing.

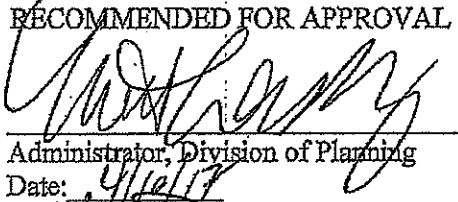
D. The C&M is incorporated for reference as Exhibit A.

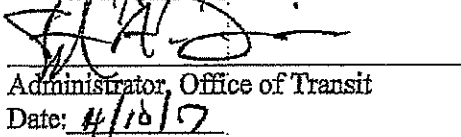
17. All costs billed under this Agreement are subject to audit. The City agrees to maintain all records pertaining to the costs incurred in performance of the Project and this Agreement for a period of three (3) years from the date of final payment and all other pending matters are closed.
18. The State reserves the right to terminate this Agreement if State funds are rescinded or not authorized.
19. This Agreement may not be altered or amended except by written agreement signed by all the Parties.
20. The Parties agree the Mayor shall take all necessary steps to receive authority from the City Council to enter into and execute this Agreement including but not limited to submission of this Agreement to the City Council for ratification and submission of proof of such authority to the State concurrent with execution of the Agreement.

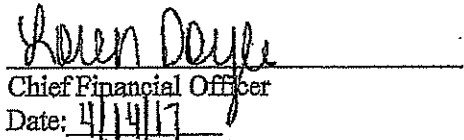
IN WITNESS WHEREOF, the Rhode Island Department of Transportation, City of Providence and Woonasquatucket River Watershed Council have caused this Agreement to be executed by duly authorized officials on the _____ day of _____, 2017.

DEPARTMENT OF TRANSPORTATION

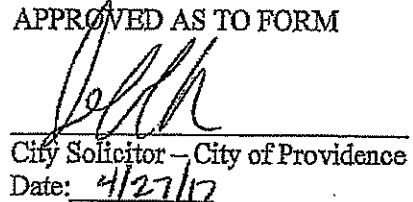
RECOMMENDED FOR APPROVAL

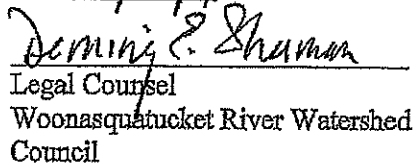

Administrator, Division of Planning
Date: 4/10/17


Administrator, Office of Transit
Date: 4/10/17

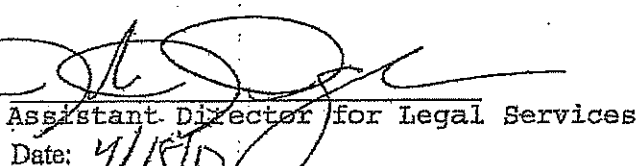

Chief Financial Officer
Date: 4/14/17

APPROVED AS TO FORM

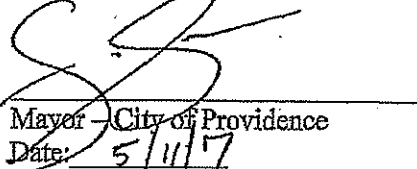

City Solicitor - City of Providence
Date: 4/27/17


Legal Counsel
Woonasquatucket River Watershed
Council

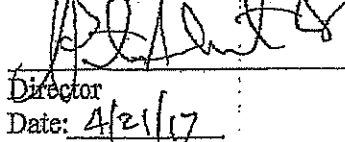
APPROVED AS TO FORM:

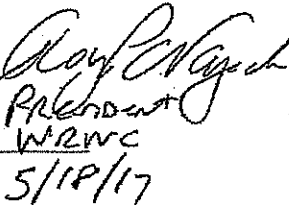

Assistant Director for Legal Services
Date: 4/18/17

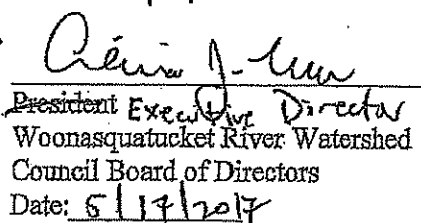
APPROVED:


Mayor - City of Providence
Date: 5/11/17

APPROVED


Director
Date: 4/21/17


President
WRWC
5/18/17


President Executive Director
Woonasquatucket River Watershed
Council Board of Directors
Date: 5/17/2017

Woonasquatucket River Watershed Council

STATE OF R.I.

COUNTY OF Providence

In Providence, Rhode Island, on this 18 day of
May, 2017 before me personally appeared Roy Najecki, President of the
Woonasquatucket River Watershed Council Board of Directors, to me known and known by me to be the
party executing the foregoing instrument, and he acknowledged said instrument by him executed to be his
free act and deed in said capacity, and the free act and deed of said Woonasquatucket River Watershed
Council.

Elizabeth Baptista
Notary Public

Print Name: Elizabeth Baptista

My Commission Expires 11/20/2017

CERTIFICATE OF AUTHORITY

I, Louis Lariviere, certify that I am the Secretary of the Woonasquatucket River Watershed Council in Providence, Rhode Island, the corporation described in and which executed the foregoing instrument with the State of Rhode Island; that the said corporation is organized under the laws of the State of Rhode Island; that the corporate seal affixed to said instrument is the seal of said corporation; that Roy Najecki, President of the Board of Directors who executed said instrument as President of the Board of Directors of said corporation was then President of the Board of Directors of said corporation and has been duly authorized to execute said instrument in behalf of said corporation; that I know the signature of said Roy Najecki and that the signature affixed to such instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said corporation, this 19th day of May 2017.

Louis R. Lariviere

Louis R. Lariviere

Secretary

EXHIBIT B

NORTHWEST BIKE TRAIL /WOONASQUATUCKET RIVER BIKEWAY

CONTRACT-1

and

REPLACEMENT OF PLEASANT VALLEY PARKWAY BRIDGE NO. 777

CONSTRUCTION & MAINTENANCE AGREEMENT

MUNICIPAL HIGHWAY

FEDERAL FUNDS

by and between the

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

and the

CITY OF PROVIDENCE

AMENDMENT ONE

Amendment One made and entered into by and between the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (hereinafter called the STATE), through its Department of Transportation and the CITY OF PROVIDENCE (hereinafter called the MUNICIPALITY).

WHEREAS, the STATE and the MUNICIPALITY entered into a Construction and Maintenance Agreement for the NORTHWEST BIKE TRAIL /WOONASQUATUCKET RIVER BIKEWAY and REPLACEMENT OF PLEASANT VALLEY PARKWAY BRIDGE NO. 777 dated October 2, 2003 (attached hereto as Exhibit 1); and

WHEREAS, the STATE and the MUNICIPALITY wish to enter into this Amendment One to the Agreement amending the Description of the Project.

NOW THEREFORE, in consideration of the foregoing mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the STATE and the MUNICIPALITY agree as follows:

1. PAGE 3 –DESCRIPTION - ITEMS 1-5 are hereby deleted in their entirety and replaced with the following:

DESCRIPTION:

1. Maintenance of the various roadways associated with this project (Dean Street, Pleasant Valley Parkway, Promenade Street, Kinsley Avenue, Providence Place, Bath Street, Acorn Street) will be the responsibility of the MUNICIPALITY and is

Rev. 02/16

IN CITY COUNCIL
APR 06 2017

READ

WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED AND APPROVED
John L. Deegan CLERK

inclusive of providing striping, signing, pavement markings, snow removal, and regular sweeping to designate and maintain the bike lanes.

2. The MUNICIPALITY in accordance with the MUNICIPALITY's October 22, 2015 correspondence (Attached hereto as Exhibit 2) understands and agrees to the placement of signage, striping and pavement markings to designate the bike lanes installed under the Replacement of the Pleasant Valley Parkway Bridge No. 777 contract, and agrees to maintain these bike lanes as needed.
 3. The MUNICIPALITY understands and agrees that the traffic signal equipment located at the intersection of Dean Street/ Promenade and Dean Street/Kinsley Avenue and installed under the Bridge No. 777 contract will remain as property of the RI Department of Transportation.
 4. The MUNICIPALITY understands and agrees to the removal of the bike lane along the left-hand shoulder of Providence Place and Promenade Street from Dean Street to Park Street and restriping these streets so as to create a bike lane along the right shoulder of each within those limits.
-
2. The Mayor will take all necessary steps to receive authority from the City Council to enter into and execute this AMENDMENT ONE, including but not limited to submission of this AMENDMENT ONE to the City Council for ratification and submission of proof of such authority to the State.
 3. All other provisions of the AGREEMENT shall remain in full force and effect.

THIS SPACE INTENTIONALLY
LEFT BLANK

IN WITNESS WHEREOF, the PARTIES have caused this AMENDMENT ONE to be executed by their duly authorized officials as of the date last written below.

Recommended for Approval:
DEPARTMENT OF TRANSPORTATION:

David W. Fish
David Fish, P.E.
Acting Chief Engineer
Department of Transportation

Date: 3-16-16

MUNICIPALITY:

William Bombard
William Bombard
City Engineer
City of Providence

Date: _____

Approved as to form:

[Signature]
Executive Counsel
Department of Transportation

Date: 3/16/16

[Signature]

City Solicitor
City of Providence

Date: _____

Approved:

Peter Alviti
Director Peter Alviti, P.E.
Department of Transportation

Date: 3/21/16

[Signature]
Mayor
City of Providence

Date: 12/21/16

Examined and Approval:

Division Administrator
U.S. Department of Transportation
Federal Highway Administration

Date: _____

Exhibit #1

Design R/C 11. 3. 02

NORTHWEST BIKE TRAIL /WOONASQUATUCKET RIVER BIKEWAY

CONTRACT-1

CONSTRUCTION & MAINTENANCE AGREEMENT --

MUNICIPAL HIGHWAY

FEDERAL FUNDS

by and between the

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

and the

CITY OF PROVIDENCE

AGREEMENT entered into by and between the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS (hereinafter called the STATE), through its Department of Transportation and the CITY OF PROVIDENCE (hereinafter called the MUNICIPALITY).

WHEREAS the STATE, in cooperation with the MUNICIPALITY, has selected the above-referenced Project in PROVIDENCE, RHODE ISLAND for improvements under the provisions established in the Federal-Aid Policy Guide (FAPG), of the United States Department of Transportation, Federal Highway Administration, and

WHEREAS the STATE will accomplish said improvements with funds apportioned to the STATE under the Federal-Aid Highway Act, as amended and supplemented, and from other sources available for the purpose, subject, however, to various conditions including that the MUNICIPALITY shall provide for the proper maintenance after completion of the improvements,

NOW THEREFORE, the STATE and the MUNICIPALITY hereby agree as follows:

SECTION I - GENERAL PROVISIONS

1. The STATE, through its Contractor, will construct the improvements in accordance with the Plans and Specifications for the Project.

2. The MUNICIPALITY will allow the STATE to enter onto its property for purposes of constructing the Project.

3. Prior to construction of the Project, the MUNICIPALITY will remove, by its own forces any and all municipally-owned materials including but not limited to traffic signal systems, granite curb and directional/regulatory/warning signs, which the MUNICIPALITY desires salvaged and stockpiled. Should the MUNICIPALITY fail to remove said materials, the MUNICIPALITY will reimburse the STATE for all costs incurred relative to the handling, hauling and disposal of said materials to the MUNICIPALITY's designated storage site.

4. Upon completion of the Project, the MUNICIPALITY will:

(a) regulate the parking, standing, moving and guiding operations of vehicles and pedestrians in conformance with the specifications of the approved plans for the Project;

(b) conform to the latest edition of the Manual on Uniform Traffic Control Devices and Standards relative to all traffic control signals, flashing beacons, traffic islands, regulatory or warning signs, pavement markings, or other traffic control devices;

(c) enforce traffic regulations established in accordance with this Agreement and for the traffic devices installed in connection therewith;

(d) enact any further regulations necessary to assure the preferential, safe and efficient movement of traffic in keeping with the through traffic service to be provided by this Project. Dated and attested copies of amendments to the Municipal Ordinance necessary for the enforcement of any specific provisions will be forwarded by the MUNICIPALITY to the STATE. All necessary Municipal Ordinances applicable to this Project shall be in effect prior to completion of construction; and

(e) maintain all portions of the Project, in accordance with the RIDOT Plans and Specifications, at its own cost and expense, after construction is completed and will make ample provision each year for such maintenance.

5. All work performed under this Project is subject to the approval and inspection of the STATE and Federal authorities in accordance with the provisions of the Federal-Aid Highway Act and the regulations, including the Federal-Aid Policy Guide (FAPG), as aforementioned, which are hereby made a part of this Agreement by reference.

6. This Agreement may be amended only after the prior approval of the Division Administrator, Federal Highway Administration has been obtained as to such proposed amendment.

7. (a) The MUNICIPALITY will use or allow the use of for transportation purposes only the space below a plane sixteen feet, four inches (16' - 4") above the existing grade of the highway or the minimum clearance plus four inches as approved by the STATE, except the space necessary for foundations, vertical support facilities and utility and mechanical systems. Any other space above and below the highway may be used for other than transportation purposes only with the approval of the STATE and Federal authorities and in accordance with the provisions of the Federal-Aid Highway Act and the regulations adopted thereunder.

7. (b) The STATE reserves the right to require the execution of an Agreement between the STATE and the MUNICIPALITY or a third party responsible for developing and operating the air space for any use of the space above and below the highway for other than transportation purposes and said Agreement shall be submitted to the FHWA for approval.

Description:

1. Maintenance of the various roadways associated with this project will be the responsibility of the City of Providence and is inclusive of providing striping to designate the bike lane and also continuing to provide bollards at all times.

2. The City of Providence understands and agrees to the elimination of one westbound travel lane on Promenade Street from Park Street to Bath Street so as to create parallel parking on the northern shoulder and a bike path on the southern shoulder.

3. The City of Providence understands and agrees to the elimination of parallel parking on the southern shoulder of Kinsley Avenue from Eagle Street to Dean Street so as to create a bike path.

4. The City of Providence understands and agrees to the elimination of one eastbound travel/stacking lane on Kinsley Avenue at the intersection with Dean Street so as to create a bike path. The remaining eastbound travel lane will not only provide through movement, but also left turns.

5. The City of Providence understands the removal of light standard foundations, light standards and luminaries from Promenade Street, Dean Street, Kinsley Avenue and Providence Place will be those exclusively shown on the Plans. The Contractor who is awarded the construction job will be stockpiling them at the Providence Department of Public Works, 60 Ernest Street.

Design: RUC No. 03-03

IN WITNESS WHEREOF, the STATE and the MUNICIPALITY have caused this
AGREEMENT to be executed by their duly authorized officials as of the 2nd day of October,
2001. 2003

Recommended for Approval:



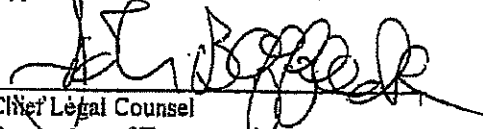
Chief Engineer
Department of Transportation

City of Providence:

By: 

Mayor

Approved as to form:



Chief Legal Counsel
Department of Transportation

Approved:



Director
Department of Transportation

N.A.
Division Administrator
U.S. Department of Transportation
Federal Highway Administration

NORTHWEST BIKE TRAIL / WOONASQUATUCKET RIVER BIKEWAY
CONTRACT-1
CONSTRUCTION & MAINTENANCE AGREEMENT
by and between the
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
and the
CITY OF PROVIDENCE

Exhibit #2



Mayor of Providence

Jorge O. Elorza

October 22, 2015

Director Peter Alvitl
Rhode Island Department of Transportation
Two Capitol Hill
Providence, RI 02903


Dear Director Alvitl,

I am writing to express my support for the Rhode Island Department of Transportation's efforts to make the Pleasant Valley Parkway Bridge over the Woonasquatucket River safer for bicyclists by providing bicycle lanes on the bridge. The bridge provides a crucial connection for bicyclists between Downtown, Federal Hill, and the West End to the entire northwest quadrant of the City. I am committed to improving bicycle infrastructure throughout the City of Providence, particularly along key corridors that have the opportunity to connect neighborhoods and important destinations. Based on public feedback and concern, the Pleasant Valley Parkway-Dean Street corridor was identified by the Providence Bicycle and Pedestrian Advisory Commission as a priority corridor for bicycle infrastructure improvements at a public forum earlier this year. As a result of feedback received at that forum, Department of Planning and Development will soon be updating the City's Bicycle Master Plan to plan for and prioritize the bicycle infrastructure improvements that are needed citywide. This update will include recommendations for improvements to the entire Pleasant Valley Parkway-Dean Street corridor to connect RIDOT's investment in bicycle infrastructure on the bridge to the north and south.

Moving forward, I request that RIDOT work closely with the Providence Department of Planning and Development and the Providence community to integrate more robust bicycle and pedestrian infrastructure on state roadways throughout the City, including the recommendations that emerge from the updated Providence Bicycle Master Plan.

I look forward to working in close partnership with RIDOT to make our state more bike-friendly.

Sincerely,


Jorge O. Elorza
Mayor

City Hall, 25 Dorrance Street, Providence, RI 02903
Phone (401) 421-7740 Fax (401) 274-8240



CITY OF PROVIDENCE

Jorge O. Elorza, Mayor

Date: April 20, 2017

Jessica Rodas
Rhode Island Department of Transportation
Bridge Design
Two Capitol Hill
Providence, RI 02903

Re: Northwest Bike Trail/Woonasquatucket River Bikeway Contract 1 and Replacement of Pleasant Valley Parkway Bridge 777 – CONSTRUCTION AND MAINTENANCE AGREEMENT AMENDMENT ONE

Dear Jessica:

Attached is an original of the **Northwest Bike Trail/Woonasquatucket River Bikeway Contract 1 and Replacement of Pleasant Valley Parkway Bridge 777 – CONSTRUCTION AND MAINTENANCE AGREEMENT AMENDMENT ONE** with all City signatures and approvals.

Very Truly Yours

A handwritten signature in black ink that reads "Natale D. Urso".

Natale D. Urso, PE, PTOE
Traffic Engineer

DEPARTMENT OF PUBLIC WORKS

700 Allens Avenue Providence, Rhode Island 02905

401.467.7950 ph | 401.941.2567 fax

www.providenceri.com

Design or Construction R.I. Contract No.: 2001-EB-011
Design or Construction R.I. Federal-Aid Project No.: BHO-BCDR (010)
CONSTRUCTION & MAINTENANCE AGREEMENT/MUNICIPALITY
FEDERAL FUNDS
by and between the
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
and the
CITY OF PROVIDENCE
for
Replacement of Pleasant Valley Parkway

AGREEMENT entered into by and between the State of Rhode Island and Providence Plantations (the "STATE"), through its Department of Transportation and the City of Providence (the "MUNICIPALITY").

WHEREAS the STATE, in cooperation with the MUNICIPALITY, has selected the above-referenced Project in the City of Providence, specifically Replacement of Pleasant Valley Parkway superstructure replacement (further described in the attached Project Description and referred to as the "PROJECT"), for improvements under the provisions established by the Federal Transportation Acts and policy of the United States Department of Transportation, Federal Highway Administration, and

WHEREAS the STATE will accomplish said improvements with funds apportioned to the STATE under the Federal-Aid Highway Act, as amended and supplemented, and from other sources available for the purpose, subject, however, to various conditions including that the MUNICIPALITY shall provide for the proper maintenance after completion of the improvements.

NOW THEREFORE, the STATE and the MUNICIPALITY hereby agree as follows:

1. The STATE will advertise and award the Project in conformance with 23 CFR Part 635 and the provisions of Title 37, Chapter 2 of the Rhode Island General Laws. Thereafter, the STATE shall issue a Notice to Proceed to its contractor (the "Contractor"), who will construct the improvements in accordance with the Plans and Specifications for the Project.
2. After issuance of the Notice to Proceed to the Contractor, the MUNICIPALITY will allow the Contractor to enter onto its property, where applicable, for purposes of constructing the Project.
3. The State will modify the sidewalks, including the filter boxes and pipes embedded in the sidewalk; remove and replace the street lights within the project limits.

3. Upon completion of the Project, the MUNICIPALITY will:

- (a) maintain the road altered during construction of the PROJECT within the State Right-of-Way in conformance with Chapters 24-8, Section 24-8-15 Title 24 of the Rhode Island General Laws and maintain in conformance with 23 U.S.C. §116 and ADA/Section 504 requirements, all pedestrian facilities built with federal funds under this Agreement. This maintenance obligation includes reasonable snow and ice removal efforts, allowing only temporary interruptions in service or access;
- (b) regulate the parking, standing, moving and guiding operations of vehicles and pedestrians in conformance with the specifications of the approved plans for the Project and chapters 12 through 27 of Title 31 of the Rhode Island General Laws;
- (c) conform to the latest edition of the Manual on Uniform Traffic Control Devices and Standards relative to all traffic control signals, flashing beacons, traffic islands, regulatory or warning signs, pavement markings, or other traffic control devices;
- (d) enforce traffic regulations established in accordance with this AGREEMENT;
- (e) enact any further regulations necessary to assure the preferential, safe and efficient movement of traffic in keeping with the through traffic service to be provided by this Project. Dated and attested copies of amendments to the Municipal Ordinance necessary for the enforcement of any specific provisions will be forwarded by the MUNICIPALITY to the STATE. All necessary Municipal Ordinances applicable to this Project shall be in effect prior to completion of construction; and
- (f) maintain all landscaping, sidewalk, ornamental street lighting, drainage systems, filter boxes and pipes installed during construction of this Project within the City Right-of-Way;
- (g) maintain the Project listed above in accordance with the Project Plans and Specifications, at its own cost and expense, and will make ample provision each year for such maintenance.

4. All work performed under this Project is subject to the approval and inspection of the STATE and Federal authorities in accordance with the provisions of the Federal-Aid Highway Acts and the regulations, as aforementioned, which are hereby made a part of this AGREEMENT by reference.

5. The MUNICIPALITY will use or allow the use of for transportation purposes only the space below a plane sixteen feet, four inches (16' - 4") above the existing grade of the highway or the minimum clearance plus four inches as approved by the STATE, except the space necessary for foundations, vertical support facilities and utility and mechanical systems. Any other space above and below the highway may be used for other than transportation purposes only with the approval of the STATE and Federal authorities and in accordance with the provisions of the Federal-Aid Highway Acts and the

regulations adopted thereunder.

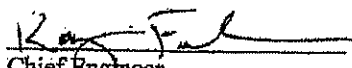
6. The STATE reserves the right to require the execution of an Agreement between the STATE and the MUNICIPALITY or a third party responsible for developing and operating the air space for any use of the space above and below the highway for other than transportation purposes and said Agreement shall be submitted to the FHWA for approval.

7. The MUNICIPALITY must notify the STATE's Maintenance Division at least 24 hours in advance of entering a traffic signal controller cabinet. The STATE's representative must be on site during maintenance of the Emergency Vehicle Priority Control System.

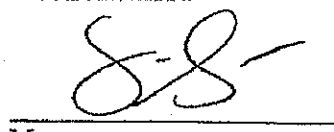
8. The Mayor will take all necessary steps to receive authority from the City Council to enter into and execute this AGREEMENT including, but not limited to, submission of this AGREEMENT to the City Council for ratification and submission of proof of such authority to the STATE prior to project advertisement.

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed by their duly authorized officials as of the date last written below.


Recommended for Approval:
DEPARTMENT OF TRANSPORTATION


Chief Engineer
Department of Transportation
Date: 1/7/15

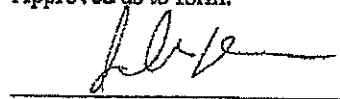
MUNICIPALITY


Mayor
City of Providence
Date: 4/8/15

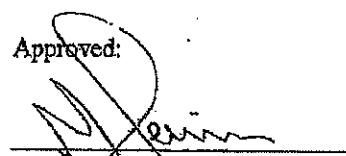
Approved as to form:


Executive Counsel
Department of Transportation
Date: 1/7/15

Approved as to form:


City Solicitor
Date: 3/20/15

Approved:


Director
Department of Transportation
Date: 1/8/15

Examined and Approval:

N/A
Division Administrator
U.S. Department of Transportation
Federal Highway Administration
Date:

PROJECT DESCRIPTION

Pleasant Valley Parkway Br. 777

This Project is located in the County of Providence, City of Providence, Rhode Island, on Pleasant Valley Parkway. The bridge work shall include the replacement of a superstructure; as a 2-span structure over Woonasquatucket River. The work for the bridge shall include, but not be limited to: bridge concrete deck and sidewalk, Precast Prestressed NEXT (New England Extreme Tee) Beams, elastomeric bearings, four-bar steel bridge railing, granite curb, concrete pier cap, concrete abutment stem, wingwalls, end posts, four-bar pedestrian railing and supports, utility conduits relocation, lighting, rip-rap installation, temporary working platform, temporary utility support bridge, temporary earth retaining system and deck joint installation. The work also includes demolition of the entire existing bridge superstructure, pier cap and partial demolition and sawcutting of the existing abutment stem to the limits shown on the contract drawings. All bridge work will be performed under a complete bridge closure.

The highway work shall include but is not limited to clearing and grubbing, full depth reconstruction of pavement, leveling course, temporary island pavement, excavation and embankment, erosion control, trimming and fine grading, sawcutting pavement, modifications to the existing storm drainage system, construct bio-retention pond, roadway lighting, new street lighting, temporary and permanent traffic signal systems, filter boxes, and filter pipes embedded in the sidewalk, modifications to sidewalk, curbing, dust control, uniform traffic persons, flagpersons, temporary construction signs, field office, mobilization, maintenance and protection of traffic, signs, traffic detour, pavement markings, loam & seed, landscape mulching, plantings, handling, hauling, stockpiling, and management of contaminated soil, and other incidentals completed and accepted as necessary to complete the work of this contract as required by the Engineer.

SUBRECIPIENT AGREEMENT

By and Among

RHODE ISLAND DEPARTMENT OF TRANSPORTATION,

CITY OF PROVIDENCE

For the

PROVIDENCE WOONASQUATUCKET GREENWAY CORRIDOR ENHANCEMENTS

Amendment One

AGREEMENT made and entered into by and between the State of Rhode Island through its Department of Transportation (hereinafter, the "State"), the City of Providence (hereinafter, the "City") utilizing its registered Unique Entity Identification (UEI)¹ number: L28MEYDFLQN5.

WHEREAS, the State and the City (hereinafter the "Parties" entered into an Agreement on the design, construction, and maintenance of the Providence Woonasquatucket Greenway Corridor Enhancements (herein after, the "Project"), on January 19, 2019 (Exhibit D).

WHEREAS, the City is the recipient of funding through the Surface Transportation Block Grant Program (STBG) from the United States Department of Transportation, administered through the Federal Highway Administration (hereinafter "FHWA") under Catalog of Federal Domestic Assistance (CFDA) 20.205, and

WHEREAS, the State has approved the City's application for funding for the Project in the State Transportation Improvement Program (STIP) FFY 2022-2031, as amended, under TIP ID# 5178 and programmed for implementation in 2022 & 2023, and

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

WHEREAS, the City agrees to be responsible for the design, construction administration, construction of the Project, and maintenance of the Project, except as provided below; 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

¹ Unique Entity Identification (UEI) Number. Note: The Name of the Entity must match the name associated with its UEI number as listed in the System for Awards Management (SAM).

WHEREAS, the State and City recognize that Project funds may be reduced based upon obligational authority limitations; and

WHEREAS, the STIP has programmed up to but not exceeding Five Million Three Hundred Thousand Dollars (\$5,300,000) in funding towards the construction of the Project; of this amount, Eighty (80) percent or up to Four Million Two Hundred and Forty Thousand Dollars (\$4,240,000.00) is federally funded through the Surface Transportation Block Grant, and up to Twenty (20) percent or One Million Sixty Thousand Dollars (\$1,060,000.00) will be State funding.

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

1. This Project will consist of a separated bicycle/pedestrian route along the Woonasquatucket River from Eagle Square to Providence Place. The Project to be constructed includes the following major items: signing and striping, drainage improvements, crosswalks, bike lane, traffic control, roadwork, landscaping, lighting, and signal controls.
2. The authorized start date of the Project for reimbursement purposes shall be the State's Notice to Proceed. The Project performance end date will be December 31, 2025.
3. The City will be responsible for design, construction administration, construction, and maintenance of the Project in accordance with the plans and specifications approved by the State. Notwithstanding, the City shall not be responsible for the maintenance of the state-owned signals at the intersections of Promenade Street and Kinsley Avenue with Dean Street).
4. The State will monitor the activities of the City 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. The City 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 will be responsible for payment of all costs associated with design, construction administration, construction, and maintenance of the Project (except as provided in paragraph 3, above); the State will reimburse the City up to and not exceeding Five Million Three Hundred Thousand Dollars (\$5,300,000) for construction administration, and construction of the Project; costs in excess of said reimbursement are the responsibility of the City. Supporting documentation of payment will be required for all reimbursements.
7. The City reserves the right to amend or revise the Project scope in the event that Project funds are reduced or eliminated or in the event that the bids exceed the Project estimates.

Alternatively, the City may elect to fund any costs in excess of the reimbursement amount by alternative means.

8. The City will select a Project Manager to administer the Project. Such administration will include but not be limited to the maintenance of a Project account, as well as processing invoices, change orders, and contract addenda. The City 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 City 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 DBE goal by RIDOT prior to advertising. RIDOT requires the submission of executed DBE subcontract Agreement(s) between the prime contractor and any qualified DBE subcontractor(s) who will perform work under this Contract. These executed contract Agreements should be submitted to the State for approval and include the executed DBE Utilization Form as the cover sheet for the DBE subcontracts. The DBE Utilization Form is Exhibit A of this Agreement.
 - C. When the City is ready to award a contract, the contract documents must include the 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 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, the City and its contractor will submit to the State a signed **Sub-Recipient Title VI Assurances and Non-Discrimination Provisions** form which is located in 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 UEI number² and be registered with the ***System for Award Management***.³
 - B. The City 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 UEI number, and select "Export PDF." Submit SAM Search Results PDF form with this Agreement.
 - C. The City is required to maintain active registration in the ***System for Award Management***. Registration must be reviewed and updated on a yearly basis prior to expiration date.
15. The City 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 expends a total amount of Federal awards equal to or in excess of \$750,000. The Town 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 audit period. Within

² To obtain a UEI number, go to <http://www.sam.gov/> and click "get started"

³ To register with the System for Award Management, go to <http://www.sam.gov/>

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 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 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 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 City 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 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 shall provide the State any change orders for review and approval prior to commencement of work.
 - D. 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 the 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. 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.
 - vi. Daily inspection reports outlining work items, work force, quantity location and measurement, and any other pertinent information needed to document Project work.
 - 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.
- E. The City 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 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 shall obtain certificates of compliance and mill certifications in accordance with the approved Materials Testing Schedule.
 - v. The City 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 without review and approval of said certificate.

- F. The City 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.
- G. 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.
- H. The City shall notify the State in writing of the anticipated start date of construction. Notification shall be delivered by hand, by electronic mail, or by certified mail with return receipt requested, in an envelope addressed as follows:

Administrator, Office of Transit
R.I. Department of Transportation
Two Capitol Hill – Room 316
Providence, RI 02903

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

- A. The City 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 and Federal 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 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."

18. 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 in 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 - Primary Covered Transactions and - 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

19. The City and State agree that no work associated with relocation of utilities underground shall be subject to reimbursement as part of this Project, other than that identified in the plans and specifications approved by the State, if any.
20. The State reserves the right to have access to any documents, papers or other records of the City 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 personnel for the purpose of interview and discussion related to such documents.
21. 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.
22. Upon completion of the Project, and except as otherwise provided herein, the City will be responsible for the maintenance of the Project improvements constructed under this Agreement, in accordance with plans and specifications developed for the Project at its own cost and expense. The Project 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.

23. All costs billed under this Agreement are subject to audit. The City 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.
24. The City Mayor 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 commencement of the Project.
25. In the event any Project infrastructure asset funded with Federal and State funds under this Agreement is subsequently removed, the City will reimburse the State the construction cost prorated based on the useful life of the infrastructure asset. The State and the City will work together to determine the appropriate value for reimbursement.
26. The State reserves the right to terminate this Agreement if state or federal funds are rescinded or not authorized.
27. 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 have caused this Agreement to be executed by duly authorized officials on the _____ day of _____, 2022

DEPARTMENT OF TRANSPORTATION:
RECOMMENDED FOR APPROVAL:

STEPHEN A. DEVINE
ADMINISTRATOR, OFFICE OF TRANSIT
DATE: _____

LOREN DOYLE
CHIEF FINANCIAL OFFICER (Acting)

DATE: _____

APPROVED AS TO FORM:

APPROVED:

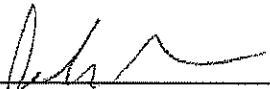
JOHN IGLIOZZI
ASSISTANT DIRECTOR OF LEGAL SERVICES
CHIEF OF STAFF
DATE: _____

PETER ALVITI, JR. P.E.
DIRECTOR
DATE: _____

CITY OF PROVIDENCE

APPROVED AS TO FORM:

APPROVED:



CITY SOLICITOR
PROVIDENCE

DATE: 7/11/22

CITY MAYOR
PROVIDENCE

DATE: _____

EXHIBIT A



RIDOT DBE UTILIZATION PLAN

Page 1 of 2

Project Name: _____

RIC No.: _____ FAP No: _____

I, _____ HEREBY DECLARE AND AFFIRM that I am the
_____ (title) and duly authorized representative of
_____ (name of Prime Contractor), and that I have personally
reviewed material and facts set forth in and submitted with this DBE Utilization Plan, including all
attached subcontracts.

The following correctly represents our DBE participation in accordance the RI DOT DBE Special Provision and 49 CFR 26.55. 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.

PART B

- The prime must initial all statements below.

_____ The Prime has read and understands the counting and commercially useful function requirements stipulated in the RIDOT DBE Special Provisions.

_____ With respect to materials provided according to the above commitment(s), the Prime Contractor agrees to provide all such documentation as required by RIDOT to determine ownership and independence in the procurement of such materials by the DBE.

_____ Materials or supplies related to the above commitments will not be purchased from, leased, or otherwise provided by the prime or any of its affiliates.

_____ The Prime Contractor is / is not (circle one) using a joint check (material purchases only). Joint Check Approval/ Acknowledgment Form, if required, is attached.

_____ With respect to material supply contracts, a RIDOT Broker Affidavit has been completed and attached for any materials that will not be directly procured by and delivered to the work site by the DBE.

_____ For each commitment to use DBE Trucking Services, as indicated above, a Trucking Worksheet has been attached.

Signature

date

RIDOT DBE UTILIZATION PLAN

Page 2 of 2

Name DBE Firms	Item Description of Work or Materials	QTY	Amount by Subcontract Type (use one column only)				(For RIDOT USE ONLY) Total Eligible Credit
			Material/Supply/or Equipment Leased (Enter 60% of contract amount) (Materials provided by a third party must be reported separately to the RIDOT DBELO. Do not count materials purchased from or paid for by the prime)	Furnish & Install (Do not count materials purchased from or paid for by the prime)	Labor only (count only the actual cost of labor to be performed by the DBE)		
			\$	\$	\$		

Total DBE Credit: \$

Total Bid Price: \$

Percentage of DBE participation on this Project: %

EXHIBIT B



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

EXHIBIT C

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 Company
_____ whose address is _____
_____.

I do hereby certify that it is the intention of the above organization, as a prime contractor, or as a prime consultant, to affirmatively seek out and consider Disadvantaged Business Enterprises (DBEs) to participate in this contract as subcontractors, subrecipients, and/or as 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 Rhode Island Department of Transportation (RIDOT), including the Office of Civil Rights, has reviewed and approved the affirmative actions taken by the above organization. I understand and agree to contact the RIDOT Office of Civil Rights (OCR) DBE Liaison Officer (DBELO) or his/her OCR staff representative, for questions related to the implementation of contracting obligations related to the 49 CFR 26, and this provision, and follow the guidance and instructions given. The OCR DBELO and staff will analyze each situation on a case-by-case basis, and will issue findings, including resolving any vagueness and/or ambiguities in RIDOT policies and procedures, and/or standard specifications, based on the 49 CFR 26, its published guidance, and the guidance given by the FHWA and FTA liaisons to RIDOT, considering the language, purpose, and intent of the 49 CFR 26.

I. DBE Goal (%)

The Department has established, in connection with this contract, a DBE goal, as specified in the proposal of the original contract amount, for the utilization of firms owned and controlled by socially and/or economically disadvantaged individuals certified as DBEs by the Rhode Island Unified Certification Program (RIUCP). This DBE goal remains in effect for the life of the project. Therefore, throughout the life of the contract, the contractor must proactively make, document, and submit good faith efforts to meet the contract goal and its commitments to each DBE approved in the contractor's DBE Utilization Plan.

DBE regulations require RIDOT to track both race-conscious DBE participation (i.e., via individual contract goals), and race-neutral DBE participation (i.e., participation beyond contract goals). Both race-conscious and race-neutral DBE participation directly impact RIDOT's overall 3-year DBE participation goals. There is a direct correlation between the amount of race-neutral DBE participation and individual DBE contract goals. Increased race-neutral DBE participation could ultimately result in fewer and lower contract goals assigned to future contracts. Therefore, if a contract has a 0% DBE goal, RIDOT and/or the contractor should make an effort to identify, use DBEs, and report the DBE participation to RIDOT's DBELO for calculation as race-neutral participation.

Contract Assurance As a recipient of federal funds, the U.S. Department of Transportation (USDOT) requires RIDOT to include the following paragraph in contracts for federally funded projects. It applies to the bidder, and the bidder must also include it in each subcontract it in each subcontract agreement executed for this contract:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these applicable requirements is a material breach of contract, which may result in the termination of this contract of such other remedy as the recipient (RIDOT) deems appropriate, which may include, but is not limited to: 1) withholding monthly progress payments, 2) assessing sanctions, 3) liquidated damages, 4) disqualifying the contract from future bidding as non-responsible.

II. DEFINITIONS:

Administrator. Administrator, Civil Rights Program (RIDOT).

Commercially Useful Function. A DBE performs a Commercially Useful Function (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 CUF, 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, installing (where applicable), and paying for the material itself.

Contractor. Prime Contractor on construction contracts. Prime consultant on professional services contracts.

DBE Liaison Officer (DBELO). Department employee responsible for developing the DBE Program Plan manual, and monitoring and reporting on its implementation, and recommending corrective actions to bring RIDOT, contractors, subcontractors, and subrecipients into compliance with DBE requirements.

DBE Participation. DBE Participation and Commitment that is documented on the DBE Utilization Form. (See, also, "Race-conscious measures (goals) or programs" and Race-neutral measures (goals) or programs," defined below.)

Disadvantaged Business Enterprise (DBE). A for-profit small business concern:

1. An entity certified by the Rhode Island Unified Certification Program (RIUCP), administered by the Department of Administration Office of Diversity, Equity, and Opportunity (ODEO)/Minority Business Enterprise Compliance Office (MBECO), as listed on <http://odeo.ri.gov/>.
2. That meets the ownership and control requirements of the DBE certification program.
3. That meets the Personal Net Worth requirements of the DBE certification program.

Good Faith Efforts (GFE).

GFE Administrative Review (GFEAR) Group. A group of at least three (as selected and required by the DBELO representing the Office of Civil Rights DBE section) that includes the DBELO or his/her designated staff representative, and other RIDOT personnel that will perform the Administrative Reconsideration appeal review of an initial Good Faith Effort determination.

GFEAR can perform an appeal review at any phase of a contract; pre-award or post-award.

GFE Group. The group that makes the initial Good Faith Effort review. The GFE Group can perform a good faith effort review at any phase of a contract; pre-award or post-award.

Joint Venture. 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.

Manufacturer. 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.

Race-conscious measures (goals) or programs. Are those that are focused specifically on assisting DBEs. For example, the establishment of contract goals for DBE participation is a race conscious measure.

Race-neutral measures (goals) or programs. Are those that are, or can be, used to assist all small businesses, including DBEs. Race-neutral DBE participation includes, but is not limited to, any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Regular Dealer. 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 public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Whether a DBE firm meets the criteria for being treated as a regular dealer is a contract-by-contract determination to be made by the Department.

Subcontractor. Subcontractor on construction contracts, or subconsultant on professional services contracts. A first-tier subcontractor has an agreement directly with a prime contractor. A second-tier subcontractor has an agreement with a first-tier subcontractor. A third-tier subcontractor has an agreement with a second-tier subcontractor.

Shortfall. The difference between the dollar amount on the approved DBE Utilization Plan form(s) and the amount of payments to, and verified by, the approved DBE entities, and when the payments total less than the contract goal (i.e., the approved DBE commitments minus the verified payments).

Small Business Concern. Means, with respect to firms seeking to participate in USDOT- 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).

Supplier. A manufacturer, regular dealer, or transaction expeditor/broker.

Transaction Expeditor/Broker. A DBE packager, broker, manufacturers' representatives, or other persons who arrange or expedite transactions and who arrange for material drop-shipments.

III. PRE-AWARD PERIOD REQUIREMENTS FOR PROJECTS WITH A DBE GOAL.

All bidders must meet bid submission requirements at the time of bid opening, as a matter of responsiveness to the bid. Failure to be responsive to a bid will result in ineligibility for the contract award.

Prior to contract award and at the time of the opening of bids, the contractor shall, at a minimum, take the following actions to meet the race-conscious goal established by OCR, hereinafter referred to as the 'contract goal':

- A. **EEO Officer.** Submit the name and contact information of its EEO Officer appointed to administer the Contractor's DBE obligations.
- B. **Submission Preparation.** The prime contractor is obliged to obtain and to provide all applicable NAICS codes for each proposed first-tier, and second-tier DBE, and work item numbers and codes corresponding with RIDOT's Engineers Estimate, that it will perform on the contract. Submit to the Department 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 Department, and include the name of the DBE, scope of work, and the actual dollar value.
 - 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.
- C. **Submission Requirements.** To adequately demonstrate sufficient commitments to meet or exceed the DBE contract goal, each bidder is required to submit evidence of such commitments at the bid opening as presented on DBE Utilization Plan Form, and documented good faith efforts.

When RIDOT's OCR determines that the bidder has not submitted sufficient commitments to meet the DBE contract goal established by the Department (the Department will not round up), OCR then will review the bidder's documented Good Faith Efforts (GFEs) used to attempt to meet the contract DBE goal. The bidder must demonstrate that the efforts made were those that a bidder seeking to meet the DBE goal established by the Department would make, given all relevant circumstances. All submissions must include, as a part of the GFE documentation, copies of each DBE and non-DBE subcontractor quote when a non-DBE subcontractor was selected over a DBE subcontractor for work on the contract.

- D. **Good Faith Effort Requirements.** The efforts demonstrated by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain sufficient DBE participation to achieve contract DBE goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The following actions illustrate the types of efforts that may be taken. This list is not deemed to be exclusive or exhaustive. The DBELO and/or GFE Group will consider other factors and types of efforts that may be relevant:

- Efforts made to conduct market research to identify small business contractors and suppliers and solicit through all reasonable and available means (e.g., use of the ODEO UCP website, attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder should provide written notification, at least 15 calendar days before the bid opening, to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (ie. smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Efforts made to negotiate in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract DBE goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in and of itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of contract with its own work force does not relieve the bidder of the responsibility to make a GFE. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Bidder's determination of a DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within the industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the contract DBE goal. Another practice considered an insufficient GFE is the rejection of a DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy the contract DBE goal.
- Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
- Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

- Efforts to effectively use the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

IV. ACTIONS TO BE TAKEN BY THE DEPARTMENT DURING POST-QUALIFICATION AND BEFORE AWARD—

- a) Approval. If the apparent low bidder submits its DBE Utilization Plan Form by the bid date and meets the contract DBE goal and all other contract and DBE regulatory requirements, the Department will approve the submission.
- b) Good Faith Effort Review. If the apparent low bidder fails to meet the contract DBE goal, the Department will review the GFE documentation. If, during the review of the Contractor's GFE information, the reviewers have questions, the Contractor may be contacted for clarification. The GFE steps are as follows:
 1. The DBELO or GFE Group either:
 - a) Determines that the GFE was met and the DBE Utilization Plan Form will be approved, or
 - b) Disapproves the GFE and the DBE Utilization Plan. The bidder will be notified and may accept the DBELO's determination or request an Administrative Reconsideration appeal with the GFEAR.
 2. If forwarded to them, the GFE Group meets and makes the final determination. If the GFE Group determines that the apparent low bidder met the GFE, the DBE Utilization Plan will be approved. If the GFE Group determines that the apparent low bidder has failed to make a GFE, the bid will be rejected, and the apparent low bidder will be notified, in writing, of the reasons for the rejection.
- c) The Department will provide their approval or rejection in writing.

V. POST-AWARD PERIOD REQUIREMENTS:

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

Utilization of certified DBEs is in addition to all other equal opportunity requirements of the contract.

Count DBE participation toward meeting the DBE goal for federal projects as follows: If a firm is a certified DBE contractor or subcontractor at the time that submission of the bids are due, the total dollar value of the contract awarded to the certified DBE is counted toward the applicable DBE goal as provided below. Any services to be performed by a DBE are required to be readily identifiable to the project.

Construction/Consultant Services. 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.

Prime Contractor/Prime Consultant. The Department, per USDOT regulations, and state law, requires that all prime contractors/consultants perform at least forty percent (40%) of the work. A DBE prime contractor will receive credit for all work performed with its own forces. RIDOT strongly encourages DBE prime contractors/consultants to make additional outreach efforts to solicit DBEs to perform subcontracting work on the project.

Subcontractor. When a DBE participates in a contract directly as a subcontractor, or as a second-tier, count only the value of the work that the DBE actually performs. The Department only will allow DBE credit for work performed by first-tier and second-tier DBE subcontractors.

- a) Count the entire amount of that portion of a contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the subcontract, including supplies purchased or equipment leased by the DBE.
- b) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count.
- c) Count expenditures to a DBE subcontractor only if the DBE is performing a CUF on that contract.
- d) 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:
 - e) 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.
 - f) 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.
 - g) 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.
 - h) 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 CIIF

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:

- i) A DBE must perform or exercise responsibility for at least forty percent (40%) percent of the total cost of its contract with its own work force.
- j) 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.
- k) The personnel must have a specialized expertise which has not been mastered by the DBE's own skilled/supervising/managerial personnel.
- l) 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.
- m) 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, is not consistent with the CUF guidelines.
- n) 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.
- o) A DBE's use of equipment owned by a prime contractor or another subcontractor is inconsistent with the CUF guidelines and will result in noncompliance.

Materials and Supplies. 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.

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 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.

DBE Manufacturer. If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies.

DBE Regular Dealer. If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies.

DBE Broker. If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, 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 or supplies required on a job site, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves.

Trucking Firms. Count 100% of trucking costs using the following factors to determine what can be counted:

1. Count if the DBE is responsible for the management and supervision of 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.
2. Count if the DBE owns and operates at least one fully licensed, insured, and operational truck used on the contract.
3. Count the total value of the transportation services the DBE provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is a certified DBE. If the DBE leases trucks from another DBE, count the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. If the DBE leases trucks from a non-DBE firm and the DBE operates these leased trucks (with its own forces), count the total value of the transportation services. If the DBE leases trucks from a non-DBE owner-operator, count only the fee or commission it paid as a result of the lease arrangement. Do not count the total value of the transportation services provided by the lessee (non-DBE owner-operator), since these services are not provided by a DBE.
6. For purposes of this provision, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from being used for work 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 use of the leased truck. Leased trucks must display the name and identification number of the DBE. A lease must explicitly state that the DBE leases trucks without operators when the counting of the total value of transportation services is desirable.

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.

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.

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.

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. 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.

Certification. 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). DBEs must be certified in the NAICS codes that are applicable to the work to be performed.

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.

DBE Participation Credit. 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.

VI. ACTION TO BE TAKEN BY THE DEPARTMENT DURING POST-AWARD

To ensure that all obligations awarded to DBEs under this contract are met, the Department will review the Contractor's DBE involvement efforts during the performance of the project whether or not the DBE is listed on the approved DBE Utilization Plan. The review will include a CUF review and analysis.

Sanctions. Upon completion of the work the Department will review the actual DBE participation and make a determination regarding the Contractor's compliance with the applicable requirements. Sanctions may be imposed for noncompliance or unwarranted shortfalls in the approved DBE goal.

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 and subtracting the dollar value of the eligible work actually performed by DBE subcontractors, for which the DBEs have verified payments received. 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.
- 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/>. Links to the 49 CFR 26 regulations, and to the USDOT published guidance on how to interpret certain sections of the regulations:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=ba0d6b5c8e33f26453add22334d6af4d&mc=true&node=pt49.1.26&rgn=div5>

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>

<https://cms8.dot.gov/sites/dot.gov/files/2020-01/docr-20180425-001part26qa.pdf>

- 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. ~~on the award of contract will be notified~~

VII. ACTIONS REQUIRED BY THE CONTRACTOR DURING POST-AWARD.

- a) **DBE Participation.** Must continue to make GFEs for the life of the project. When the DBE Utilization Plan is approved with DBE participation less than the contract DBE goal, continue GFE toward meeting the contract DBE goal. Ensure that the Commitment is attained. Proof of attainment is documented by verified payments to DBEs, submitted to the Department, and approved by OCR.
- b) **DBE Subcontractor Approval.** The prime contractor will not receive credit towards the DBE goal for work performed by a DBE prior to the approval date of the DBE Utilization Plan by RIDOT's Office of Civil Rights DBE staff.

All firms listed on the approved DBE Utilization Plan, including those business types other than subcontractors (i.e. dealers, truckers, service providers), must be submitted for approval after the contracts are executed, and before the DBE's actual performance of work. The subcontractor request must be equal to or greater than the committed amount. Submit for subcontractor approval any other DBE whether or not they are listed on the DBE Utilization Plan. When submitting request for subcontractor approval, attach a copy of the DBE subcontract or agreement, and any contract amendments, thereafter.

- c) **Termination/Replacement.** Obtain approval from RIDOT's Office of Civil Rights (OCR) before terminating or replacing (aka, substituting) a DBE or making any change to the DBE participation listed on the approved DBE Utilization Plan, including for reduction of work items, which federal USDOT regulations treat as termination. Immediately request authorization from RIDOT's OCR in writing by completing DBE Termination/Replacement Request Form. The request must include documentation supporting the termination or replacement, and written agreement from the DBE to the change. Include proof that the contractor sent a certified letter to the DBE, giving the DBE five (5) days to respond with acceptance or rejection of the termination or reduction of its work, and notification to RIDOT's OCR. Demonstrate that every effort has been made to allow the DBE to perform. RIDOT's OCR will review submitted documented efforts to determine whether the contractor has adequately demonstrated good cause, written notice, and good faith efforts

1. If DBE replacement is agreeable between the Contractor and the DBE, document the following procedures:

- Make and submit documented GFE (Actions required by the bidder at the bidding stage and prior to award for projects with a DBE Goal) to subcontract the same work with another DBE, or subcontract other work items to DBE firms, to make up the DBE shortfall. A prime contractor's inability to find a replacement DBE at the contract price is not, in and of itself, adequate to support a finding that GFEs have been made to replace the original DBE. The fact that the prime contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the prime contractor

of the obligation to make GFEs to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

- When the substitution results in meeting the DBE goal, complete a revised subcontractor approval request within seven (7) days. If the DBE performed on the project, the revised subcontractor approval request should include the total amount

paid to the DBE before the DBE substitution.

- When the substitution does not result in meeting the DBE goal, provide additional GFE documentation, including (1) a statement of efforts made to negotiate with DBEs for specific work or supplies, including the names, addresses, telephone numbers, and emails of those DBEs that were contacted; (2) the time and date each DBE was contacted; (3) a description of the information provided to DBEs regarding plans and specifications for portions of the work to be performed or the materials supplied; and (4) an explanation of why an agreement between the prime contractor and DBE was not reached. If the DBE performed on the project, the revised DBE Utilization Plan should include the total amount paid to the DBE before the DBE substitution.
- Good Faith Effort Review. RIDOT will review the GFE documentation for substitution. If, during the review of the Contractor's GFE information, the reviewers have questions, the Contractor may be contacted for clarification. The GFE steps are as follows:
 1. The RIDOT reviews and makes recommendation to the GFEAR for their determination.
 2. The GFEAR either:
 - a. Approves recommendation that the GFE was met and the substitution will be approved, or
 - b. Disapproves the GFE resulting in a shortfall requiring the contractor to continue GFEs.

The prime contractor will not be eligible to receive credits towards the DBE goal until OCR approves the substituted DBE firm.

If the projected DBE participation on an approved DBE Utilization Plan meets or exceeds the DBE goal amount for the contract without replacing the DBE, then no contract shortfall exists. However, OCR could recommend sanctions for other non-compliance issues (e.g. non-compliance with prompt payment requirements, failure of DBE to perform a commercially useful function (CUF), failure to comply with Termination/Replacement requirements, etc.).

2. If the arrangement for DBE replacement is not agreeable between the Contractor and the DBE, the following procedures are required:
 - The Contractor is not eligible for credit for DBE work performed prior to OCR's approval of the DBE replacement.
 - The DBELO and/or GFE Group, or GFEAR, will review and make a determination and RIDOT will notify both the Contractor and the DBE.

Additional Work. When additional work is required for any classification of work, which is identified on the DBE Utilization Plan, to be performed by the DBE, at least 50% of this additional work will be performed by the same DBE unless the DBE submits, in writing, that it cannot perform the work due to its own limitations.

Progress Payments. 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. The 49 CFR 26 Prompt Payment requirements apply to both DBE and non-DBE subcontracts. The Contractor must maintain adequate records to document its compliance with prompt payment, and is responsible for the subcontractors' compliance with the submission of their payment reporting by way of this software.

Make payments in accordance with Section 109 of the RI Standard Specifications for Road and Bridge Construction. Document payments on the Contracting Invoice and as required in Prism and submit to RIDOT with each payment request. Contractor must issue prompt and full payment of retainage to the subcontractor within 30 days after the subcontractor's work is satisfactorily complete. For the purposes of prompt payment, a subcontractor's work is satisfactorily complete when all the tasks called for in the subcontract have been accomplished and documented as required by RIDOT. When RIDOT has made an incremental acceptance of a portion of the prime contract, the subcontractor covered by that acceptance is deemed to be satisfactorily complete.

Joint Check Procedure for DBEs: A prime contractor must receive written approval by RIDOT's DBELO before using a joint check for materials/supplies called for under a subcontract with a DBE. The prime contractor shall submit joint check requests in writing to the RIDOT's DBELO 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.

FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

6. Prior to receiving final payment, the Contractor shall provide to the Resident Engineer certification of the dollars paid to each DBE firm using the "DBE Request for Verification Payment" form. 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 including, but not limited to, those listed in Sections I. of this provision.
7. 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.
8. 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 Department will pay the Prime Contractor for all work covered by the acceptance including the relevant portion of retainage due the Subcontractor. Within thirty (30) days of receipt of such payment, the

Prime Contractor shall pay the Subcontractor for all accepted Subcontract work including all retainage owed. For any payments the Prime Contractor receives for Subcontractor work, the Contractor shall complete RIDOT's payment verification form or any other form or process (e.g., entering required information into PRISM) required by the Department and shall submit the fully executed form(s) to RIDOT within ten (10) days of the Subcontractor signing the form.

Records and Reports. Keep such project records as are necessary to determine compliance with DBE Requirements. These records can be used as GFE documentation. Design these records to indicate:

- The number of disadvantaged and non-disadvantaged subcontractors, small businesses, regular dealers, manufacturers, consultants, and service providers, and the type of work or services performed on or materials incorporated in this project.
- The progress and efforts made in seeking out DBE contractor organizations and individual DBEs for work on this project.
- Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs for this project. Submit reports, as required by the Department. Certify that the amounts were actually paid to the DBE for work performed on the project and keep cancelled checks on file in the home office to reflect payment for the specific project and for inspection and audit by the Department. Record the payment information on Contractor Invoice and document the following:
 - The number of contracts awarded to DBEs, the work items performed with corresponding amounts, and total amount of each contract executed with each firm, and the execution date of each contract.
 - The amount paid to each DBE during each month, the amount paid to date, and retainage withheld. If no payments are made to a DBE during the month, enter a zero (\$0.00) payment.
 - Paid invoices and a certification by each DBE attesting to the actual amount paid to each firm, upon completion of each DBE's work. If the actual amount paid (as verified by each DBE) is less than the committed amount to each DBE, provide a complete explanation of the shortfall difference.

Maintain all such records for a period of three (3) years following acceptance of final payment from RIDOT to Contractor. Make these records available for inspection by the RIDOT, FTA and FHWA.

If DBE credit is being claimed for material costs included in a DBE subcontract or agreement, submit purchase orders for the material along with the Contractor Invoice to the Owner on a monthly basis.

Signature of Contractor or Consultant

Date

Printed Name of Contractor or Consultant