

RESOLUTION OF THE CITY COUNCIL

No. 385

Approved July 10, 2018

WHEREAS, The City of Providence (“City”) shall be the recipient of TAP funding 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 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 Kennedy Plaza (hereinafter the Project), which is listed in the Transportation Improvement Program under ID# 1460 and for implementation in 2018 and 2019; and

WHEREAS, The City has agreed to contribute up to and not exceeding five hundred thousand dollars (\$500,000) in funding towards the design and engineering of the Project; and

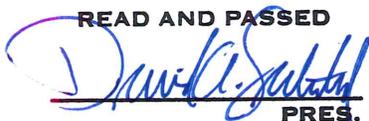
WHEREAS, Pursuant to Section 2-21 of the Providence Code of Ordinances, all contracts made and entered into by or on behalf of the City shall be signed and executed by the Mayor of Providence.

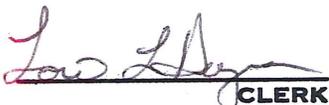
NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Providence hereby RATIFIES the accompanying Agreement made and entered into by and among the State, the Rhode Island Public Transit Authority (hereinafter “RIPTA”) and the City and hereby authorizes the Mayor of Providence to execute said Agreement on behalf of the City.

IN CITY COUNCIL

JUL 05 2018

READ AND PASSED


PRES.


CLERK

I HEREBY APPROVE.



Mayor
Date: 7/10/18

SUBRECIPIENT AGREEMENT

By and Among the

RHODE ISLAND DEPARTMENT OF TRANSPORTATION,

RHODE ISLAND PUBLIC TRANSIT AUTHORITY,

and the

CITY OF PROVIDENCE

For Improvements to GREATER KENNEDY PLAZA

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 Rhode Island Public Transit Authority (hereinafter "RIPTA") and the City of Providence, (hereinafter the "City") (collectively the "Parties").

WHEREAS, the City shall be the recipient of TAP funding 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 the funding for Kennedy Plaza (hereinafter the Project), which is listed in the Transportation Improvement Program under ID# 1460 and for implementation in 2018 and 2019; and

WHEREAS, RIPTA is engaged in the modification of traffic signals in Kennedy Plaza currently owned and maintained by the State or City as part of the Downtown Transit Connector project (hereinafter the "DTC"); and

WHEREAS, coordination of the work being undertaken as part of the DTC with the Project is essential; and

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

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

WHEREAS, the City has as its registered DUNS¹ number: 797675337; and

WHEREAS, the City has agreed to contribute up to and not exceeding five hundred thousand dollars (\$500,000) in funding towards the design and engineering of the Project;

WHEREAS, the State has agreed to contribute up to and not exceeding Two Million Seven Hundred Thousand Dollars (\$2,700,000) in Transportation Alternative Program (hereinafter "TAP") and other federal and State funding towards the Project; of this amount, thirty six percent (36%) or up to Nine Hundred Sixty Thousand Dollars (\$960,000) will be federally funded, and sixty four percent (64%) or up to One Million Seven Hundred Forty Thousand Dollars (\$1,740,000) will be state funded; 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, Highways and State requirements and procedures; and

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

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

1. The Project will consist of improvements to the Kennedy Plaza terminal and the RIPTA bus routes in accordance with Exhibit A, attached.
2. The authorized start date of the Project for reimbursement purposes from the State shall be the State's Notice to Proceed. The Project performance end date will be December 31, 2021.
3. The City will be responsible for the design and engineering of the Project at its own cost and expense, up to but not to exceed five-hundred thousand dollars (\$500,000). The City will be responsible for construction of the Project in accordance with the plans and specifications approved by the State and RIPTA. The construction of the Project will be subject to reimbursement by the State in accordance with State procedures.
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. Prior to the authorization of funding for the Project, 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

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

properties, acquisitions, easements or other right-of-way permissions are required to complete the Project.

6. The City will be responsible for payment of all costs associated with project management and construction of the Project; the State will reimburse the City up to and not exceeding Two Million Seven Hundred Thousand Dollars (\$2,700,000) for the project management and construction costs; 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 shall select a Project Manager to administer the Project. The duties of the Project Manager 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.
8. Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws of Rhode Island (state funds), or 49 CFR part 26 (federal funds), Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement.
 - A. The State shall not issue a Notice to Proceed to construction of the Project until such DBE plan, if required, has been approved.
 - B. This Project will be assigned a DBE goal. 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 addressed to the Department's Office of Business and Resources for approval and include the executed DBE Utilization Form as the cover sheet for the DBE subcontracts. The DBE Utilization Form is Exhibit B 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.
9. 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.
10. 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, City will submit to the State a signed **Sub-Recipient Title VI Assurances and Non-Discrimination Provisions** form which is located on page 1 of Exhibit D.

11. 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.
12. 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.
13. 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 FFATA and State of Rhode Island policy, all recipients and sub-recipients of federal funds must have a valid DUNS number² and be registered with the **SAM**.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 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 **SAM**. Registration must be reviewed and updated on a yearly basis prior to expiration date.
14. 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

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

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

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.

- 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.
15. The City will design the Project and develop the bid documents at its own cost and expense. The design of the Project will conform to all State design standards and policies.
- A. The City will submit the design plans to the State and RIPTA 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.
 - 1. The City will obtain approval by the State for any State-owned signal modifications or relocations according to State procedures.
 - 2. The City will perform utility probes for all relocated signals at its own cost and expense during the design of the project.
 - 3. The State and City shall enter into Construction and Maintenance (C&M) Agreements for all relocated signals. Construction of the Project cannot proceed until all said C&M Agreements have been executed.
 - 4. RIPTA review of the improvements provided as part of the Project shall include, but not necessarily be limited to, layout and impact to bus operations at the preliminary design, the 90% stage of design and at PS&E. Construction may not proceed without RIPTA's approval.

- B. The State will respond to the submissions within thirty (30) days of their receipt.
 - C. Review by the State is for the limited purpose of confirming that final design documents will be acceptable to the State and is not intended to relieve the City of full responsibility with respect to errors and omissions.
16. 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. No right of way action or construction of the project may proceed without receipt of said Environmental Determination.
17. The City will construct the Project using the design approved by the State and RIPTA 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. 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. Relocation and/or modification of all state-owned signals will be inspected by the State in accordance with State procedures.
 - C. The City may utilize a Resident Engineer from its Public Works Department and/or a consulting engineering services to be responsible for administration of the construction of the Project. This responsibility shall include:
 - 1. Monitoring the rate of progress by the contractor on the Project; interpretations of the City's contract documents and acceptable fulfillment of work by the Contractor.
 - 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 qualified assistants as mutually agreed upon with the State.

6. Issuance of interpretations and clarifications of the contract documents and 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 of payment based on the progress and quality of work in accordance with the contract documents.
 9. Quarterly monitoring and reporting of DBE requirements.
- D. 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. In addition, the State engineer will coordinate with the City to ensure that the following responsibilities are met:
1. Monitoring the rate of progress by the contractor on the Project; interpretations of the City's contract documents and acceptable fulfillment of work by the Contractor.
 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 qualified assistants as mutually agreed upon with the State.
 6. Issuance of interpretations and clarifications of the contract documents and 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 of payment based on the progress and quality of work in accordance with the contract documents.
 9. 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.

1. 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.
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. Steel used in permanent placements shall comply with Buy America Requirements.
4. The City shall obtain certificates of compliance and mill certifications in accordance with the approved Materials Testing Schedule.
5. The City must certify that all materials used as part of the Project comply with the design specifications established for the Project.
6. Contractor test results shall not be used for materials acceptance.
7. 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.
8. 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.
18. 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.
19. The City shall notify the State in writing of the anticipated start date of construction. Notification shall be delivered by hand or by certified mail, return receipt requested, in an envelope addressed as follows:

Administrator – Office of Transit
R.I. Department of Transportation
2 Capitol Hill – Room 316
Providence, RI 02903
20. 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 requirements and procedures.
 - 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."
21. 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:
 - 1. Final Inspection Report.
 - 2. Corrective action plan(s) and Certification for Punch List Resolution.
 - 3. RIDOT's Certificate of Completion & Final Acceptance certifying that the Project has been completed accordance with the contract documents.
 - 4. DBE Request for Verification of Payment.
 - 5. Certification for Prevailing Wage (Davis Bacon) Rate.
 - 6. Anti-Collusion Certification for Contract and Force Account.
 - 7. Certification Regarding Debarment, Suspension, and Other Responsibility Matters Appendix A - Primary Covered Transactions and Appendix B - Lower Tier Covered Transactions.
 - 8. Materials, Certificates of Compliance & Mill Tests Certification.
 - 9. A Copy of Single Audit Report(s) issued in years in which work was performed if applicable.
 - 10. Equal Employment Opportunity Certificate of Compliance.
 - 11. A copy of As-Built Plans.
22. The City agrees that no work associated with relocation of utilities underground shall be subject to reimbursement as part of this project.

23. 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.
24. 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.
25. Upon substantial completion of the Project, the City will be responsible for the maintenance of the facility/facilities constructed under this Agreement, in accordance with plans and specifications developed for the Project at its own cost and expense. The facility within the City's Right-of-Way (not including facilities owned by RIPTA) 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.
26. 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.
27. The State reserves the right to terminate this Agreement if state or federal funds are rescinded or not authorized.
28. This Agreement may not be altered or amended except by written agreement signed by all the parties.
29. The City agrees 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 this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by duly authorized officials on the _____ day of _____, 2018

DEPARTMENT OF TRANSPORTATION:

RHODE ISLAND PUBLIC TRANSIT AUTHORITY:

ADMINISTRATOR, OFFICE OF TRANSIT
DATE: _____

CHIEF LEGAL COUNSEL
DATE: _____

CHIEF FINANCIAL OFFICER
DATE: _____

CHIEF EXECUTIVE OFFICER
DATE: _____

APPROVED AS TO FORM:

CITY OF PROVIDENCE

RIDOT LEGAL COUNSEL
DATE: _____

PROVIDENCE CITY SOLICITOR
DATE: _____

RIDOT DIRECTOR
DATE: _____

MAYOR
DATE: _____

EXAMINED AND APPROVED:

DIVISION ADMINISTRATOR
US DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATOR
DATE: _____

EXHIBIT A: SCOPE OF WORK

Elements that may be included in this Scope of Work are as follows:

- Relocate and/or remove RIPTA bus shelters on Exchange Terrace, Washington Street, Fulton Street, East Approach, and near the base of RIPTA's East Side Bus Tunnel.
- Install new RIPTA bus shelters on Exchange Terrace, Washington Street, Fulton Street, East Approach, and near the base of RIPTA's East Side Bus Tunnel.
- Install new or modify existing fencing, lighting, seating, plantings, bollards, and associated items.
- Raise the existing elevation of East Approach between Exchange Terrace and Washington Street to be flush with existing sidewalks on either side.
- Construct new or modify existing curb radii, medians, and curb lines as needed along Exchange Terrace, Washington Street, Fulton Street, East Approach, and near the base of RIPTA's East Side Bus Tunnel.
- Mill, overlay, and restripe roads as needed along Exchange Terrace, Washington Street, Fulton Street, East Approach, and near the base of RIPTA's East Side Bus Tunnel.
- Construct a fixed barrier and other necessary improvements to separate bus-only lanes from general traffic lanes on Washington Street between Memorial and the vicinity of Canal Walk.
- Construct bicycle and pedestrian infrastructure enhancements to improve safety and comfort.
- Install new or modify existing crosswalks at intersections and mid-block locations along Exchange Terrace, Washington Street, Fulton Street, East Approach, near the base of RIPTA's East Side Bus Tunnel.
- Install new or modify existing traffic signals at intersections along Exchange Terrace, Washington Street, Fulton Street, East Approach, near the base of RIPTA's East Side Bus Tunnel.
- Remove or relocate RIPTA ticketing/fare structure and four ticket vending machines in Kennedy Plaza (on crosswalk axis) to a more appropriate location within the planned new Kennedy Plaza configuration.
- Install new or modify existing wayfinding signage in Kennedy Plaza.