

ITEM  
IX - A

**SUBRECIPIENT AGREEMENT**

By and Among

**RHODE ISLAND DEPARTMENT OF TRANSPORTATION /  
THE TOWN OF JAMESTOWN**

and the

**Jamestown Newport Ferry (Conanicut Marine Services, Inc.)**

**Ferry Boarding Dock ADA Improvements**

**AGREEMENT** made and entered into by and between the State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the State) and Conanicut Marine Services, Inc. doing business as Jamestown Newport Ferry (hereinafter Conanicut Marine Services, Inc.) which has as its registered DUNS<sup>1</sup> number: 075689984, and the Town of Jamestown, a municipality formed under the laws of the State of Rhode Island (hereinafter the "Town of Jamestown").

**WHEREAS**, the State is the recipient of Ferry Boat Program funding administered through the Federal Highway Administration under catalog of Federal Domestic Assistance (CFDA) 20.205; and

**WHEREAS**, the State has approved Ferry Boat Program funds and awarded funds under the Ferry Boat Program for the Rhode Island FY2016 designation for the ferry boarding dock ADA improvements to 1 Ferry Wharf in the Town of Jamestown, Rhode Island (hereinafter referred to as "the Docking Facility"); and

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

**WHEREAS**, Conanicut Marine Services, Inc is a registered for-profit Rhode Island business with a registered DUNS number; and

**WHEREAS**, Conanicut Marine Services, Inc agrees to be responsible for the design and construction of the Project and the Town of Jamestown agrees to consent to said design and construction; and

<sup>1</sup> 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).

WHEREAS, the Docking Facility located at 1 Ferry Wharf in the Town of Jamestown, Rhode Island is located on public property owned by the Town of Jamestown and further Identified as Plat 9, Lots 355 & 356 located in the center of Jamestown known as East Ferry; and

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

WHEREAS, the State and Conanicut Marine Services, Inc and the Town of Jamestown recognize that Project funds may be reduced based upon obligational authority limitations; and

WHEREAS, the State has agreed to contribute up to and not exceeding Two Hundred Thousand Dollars (\$200,000) in Ferry Boat Program funding towards the Project; of this amount, Eighty percent (80%), or up to One Hundred Sixty Thousand Dollars (\$160,000) in Federal funds and Twenty percent (20%) or up to Forty Thousand Dollars (\$40,000) in State funds, and the remaining cost of the construction of the project will be funded solely by Conanicut Marine Services, Inc.

NOW THEREFORE, in consideration of the foregoing premises and the mutual obligations herein, the State and Conanicut Marine Services, Inc and the Town of Jamestown hereby agree as follows:

1. The Ferry Boarding Dock Project will consist of the modification of the timber apron on the town owned wood pile pier to accommodate the a new gangway attachment angle; furnish and installation of a four feet by 40 feet aluminum gangway ramp; furnish and install concrete floating landing dock that is approximately 35 feet by 13.3 feet with attached 14.5 feet by ten feet by 30 inch high freeboard; furnish, drill, and drive four epoxy coated steel pilings, approximately 16 inch diameter to secure the concrete float docks; and furnish and install of a six foot by ten foot aluminum connecting bridge ramp to the Conanicut Marine Services, Inc. supplied timber float at 1 Ferry Wharf in the Town of Jamestown, Rhode Island, subject to final engineering upon the completion of the construction of said ramp.
2. The authorized start date of the Project for reimbursement purposes shall be the purchase order authorization date. Project performance end date will be in December 2019.
3. Conanicut Marine Services, Inc will be responsible for design and construction of the Project in accordance with the plans and specifications approved by the State and the Town of Jamestown shall consent to said design and construction as approved by the State.
4. The State will monitor the activities of Conanicut Marine Services, Inc and the Town of Jamestown as necessary to ensure that the funds are used for authorized purposes, in compliance with Federal statutes, regulation, and the terms and conditions of this Agreement.

5. Prior to the start of construction, Conanicut Marine Services, Inc and the Town of Jamestown 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. Conanicut Marine Services, Inc will be responsible for payment of all costs associated with design and construction of the Project; the State will reimburse Conanicut Marine Services, Inc up to and not exceeding Two Hundred Thousand Dollars (\$200,000) for the construction costs; costs in excess of said reimbursement are the responsibility of Conanicut Marine Services, Inc. Supporting documentation of payment will be required for all reimbursements.
7. Conanicut Marine Services, Inc 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. Conanicut Marine Services, Inc and the Town of Jamestown 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. Conanicut Marine Services, Inc shall be solely responsible for certifying any compliance pursuant to the above General Laws.
  - A. The State shall not issue a Notice to Proceed to construction of the Project until such MBE/DBE plan, if required, has been approved.
  - B. This Project will be assigned a 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 State'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 A of this Agreement.
  - C. When Conanicut Marine Services, Inc 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 State 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 State'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, Conanicut Marine Services, Inc 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, Conanicut Marine Services, Inc will submit to the State a signed **Sub-Recipient Title VI Assurances and Non-Discrimination Provisions** form which is located on page 1 of Exhibit B.

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](http://USASpending.gov).
  - A. In accordance with the Federal Fiscal Accountability Transparency Act (FFATA) and State of Rhode Island policy, all recipients and sub-recipients of federal funds must have a valid DUNS number<sup>2</sup> and be registered with the *System for Award Management*.<sup>3</sup>
  - B. Conanicut Marine Services, Inc is required to show evidence of current registration in both systems. To download a PDF verification, go to [www.sam.gov](http://www.sam.gov) and go to "Search Records," enter Conanicut Marine Services, Inc DUNS number, and select "Export PDF." Submit SAM Search Results PDF form with this Agreement.

<sup>2</sup> To obtain a DUNS number, go to <http://update.dun.com/update-companylookup.htm>

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

- C. Conanicut Marine Services, Inc is required to maintain active registration in the *System for Award Management*. Registration must be reviewed and updated a yearly basis prior to expiration date.
14. Conanicut Marine Services, Inc 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 Conanicut Marine Services, Inc 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 Conanicut Marine Services, Inc audit period. Within 6 months of RIDOT's receipt of the audit, the State will issue a management decision on the audit findings.
- A. Conversely, if during any fiscal year Conanicut Marine Services, Inc 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. Conanicut Marine Services, Inc 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 Conanicut Marine Services, Inc 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. Conanicut Marine Services, Inc 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. Conanicut Marine Services, Inc will submit the design plans to the State for review and approval at the preliminary stage of design and submit the plans, specifications, and estimates (hereinafter PS&E) at the 90% stage of design and at the PS&E stage of design. Such submissions will include but not limited to all engineering, landscaping, and permitting requirements, as applicable to the Project.
- B. The State will respond to the submissions within thirty (30) days of their receipt.
- C. Review by the State is for the limited purpose of confirming that final design documents will be acceptable to the State and is not intended to relieve Conanicut Marine Services, Inc of full responsibility with respect to errors and omissions.
16. Conanicut Marine Services, Inc 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 until an Environmental Determination has been received.
17. Conanicut Marine Services, inc 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, Conanicut Marine Services, Inc 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. Conanicut Marine Services, Inc shall be responsible for ensuring that materials incorporated into the Project are in conformance with State Standards and Specifications.
- i. Conanicut Marine Services, Inc shall submit a Materials Testing Schedule based upon the State'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. Conanicut Marine Services, Inc shall obtain certificates of compliance and mill certifications in accordance with the approved Materials Testing Schedule.
  - v. Conanicut Marine Services, Inc 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.
- C. Conanicut Marine Services, Inc 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.
- D. Conanicut Marine Services may utilize a Resident Engineer from its work force 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 Town'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. Issuance of interpretations and clarifications of the contract Documents and review and approval of shop drawings and samples as required.
  - vii. Receipt and review of inspections and tests to ensure compliance with the contract documents.
  - viii. Review of applications for payment; and, recommendation of payment based on the progress and quality of work in accordance with the contract documents.
  - ix. Quarterly monitoring and reporting of DBE requirements.
- E. Conanicut Marine Services, Inc 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  
Providence, RI 02903

18. The following are the General Program Requirements for the submission of reimbursement requests by Conanicut Marine Services, Inc.

- A. Conanicut Marine Services, Inc shall invoice the State for work completed by the contractor on the Project and the cost of materials supplied by the contractor to the Project in accordance with State requirements and procedures. All invoices shall include proper documentation, including but not limited to proof of payment for expenses included in the invoice. All invoices shall be sent directly to:  
Department of Transportation  
Attn: Accounts Payable  
Two Capitol Hill, Room 222  
Providence, RI 02903
- B. Conanicut Marine Services, Inc 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 Conanicut Marine Services, Inc."*

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

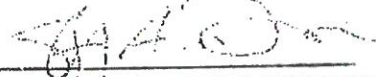
- A. Finalization and acceptance of the Project shall be performed by the State. The following items are required to finalize and close the Project:
  - i. Final Inspection Report
  - ii. Corrective action plan(s) and Certification for Punch List Resolution

- iii. RIDOT's Certificate of Completion & Final Acceptance certifying that the Project has been completed accordance with the contract documents
  - iv. DBE Request for Verification of Payment
  - v. Certification for Prevailing Wage (Davis Bacon) Rate
  - vi. Anti-Collusion Certification for Contract and Force Account
  - vii. Certification Regarding Debarment, Suspension, and Other Responsibility Matters Appendix A - Primary Covered Transactions and Appendix 8 - 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
20. The Conanicut Marine Services, Inc and the Town of Jamestown and State agree that no work associated with relocation of utilities underground shall be subject to reimbursement as part of this project.
21. The State reserves the right to have access to any documents, papers or other records of the Conanicut Marine Services, Inc and the Town of Jamestown 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 Conanicut Marine Services, Inc and the Town of Jamestown personnel for the purpose of interview and discussion related to such documents.
22. 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.
23. Upon completion of the Project, the Conanicut Marine Services, Inc will be responsible for the maintenance of the facility/facilities constructed under this Agreement, pursuant to the terms of its lease, in accordance with plans and specifications developed for the Project at its own cost and expense. The facility shall be in an accessible condition for all pedestrians, including persons with disabilities, with only isolated and temporary interruptions in accessibility as required under with 28 CFR § 35.133. This maintenance obligation includes reasonable snow removal efforts.
24. All costs billed under this Agreement are subject to audit. Conanicut Marine Services, Inc and the Town of Jamestown 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.
25. The State reserves the right to terminate this Agreement if state or federal funds are rescinded or not authorized.
26. 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 Conanicut Marine Services, Inc and the Town of Jamestown have caused this Agreement to be executed by duly authorized officials on the \_\_\_\_\_ day of \_\_\_\_\_, 2018


DEPARTMENT OF TRANSPORTATION:  
RECOMMENDED FOR APPROVAL:

  
ADMINISTRATOR, OFFICE OF TRANSIT  
DATE: 9/27/18


  
CHIEF FINANCIAL OFFICER  
DATE: 10/3/18

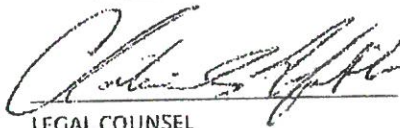
APPROVED AS TO FORM:

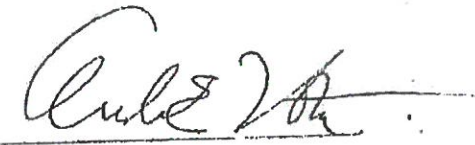
  
ASSISTANT DIRECTOR FOR LEGAL SERVICES / CHIEF OF STAFF  
DATE: 10/4/18

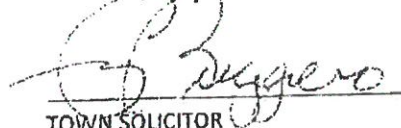
  
DIRECTOR  
DATE: 10/5/18

APPROVED AS TO FORM:

  
PRESIDENT  
CONANICUT MARINE SERVICES, INC  
DATE: 10-19-2018

  
LEGAL COUNSEL  
CONANICUT MARINE SERVICES, INC  
DATE: 11/20/18

  
TOWN COUNCIL PRESIDENT  
TOWN OF JAMESTOWN  
DATE: 10/25/18

  
TOWN SOLICITOR  
TOWN OF JAMESTOWN  
DATE: 11-19-18

**SUBRECIPIENT  
DBE UTILIZATION PLAN**

Exhibit A

By and Between

Rhode Island Department of Transportation

and the

Jamestown Newport Ferry (Conanicut Marine Services, Inc.)

Ferry Boarding Dock ADA Improvements

**DBE UTILIZATION PLAN**

I, \_\_\_\_\_ HEREBY DECLARE AND AFFIRM that I am the

\_\_\_\_\_ (Title), duly authorized representative with

\_\_\_\_\_ (Prime Contractor), and that I have personally reviewed the material and facts set forth in and submitted with this DBE Utilization Plan, including the attached DBE subcontracts. The following correctly represents our commitment to the DBE participation on this contract.

Name DBE Firms and Address	Type of Work to be Performed Contract Amount *	DBE Contract Amount

\*Indicate labor only, supply only, F&I, broker

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT B

SUB-RECIPIENT TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS

The [Name of Entity] (hereinafter referred to as the "Sub-recipient"), **HEREBY AGREES THAT**, as a condition to receiving any federal financial assistance from the U.S. Department of Transportation through the Rhode Island Department of Transportation, [Name of Entity] 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; Executive Order No. 13166, Improving Access to Services for Persons with Limited English Proficiency; and the requirements detailed in the attached Rhode Island Department of Transportation Title VI/Nondiscrimination Program Assurance.

THIS SUB-RECIPIENT ASSURANCE is given in consideration of an for the purpose of obtaining any and all federal grants, loans, contracts, agreements, property, and/or discounts, or other federal-aid and federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation and is binding on it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors, transferees, successors in interest, and any other participants in U.S. Department of Transportation programs. The person or persons whose signature appears below are authorized to sign this assurance on behalf of the Sub-recipient.

\_\_\_\_\_  
[Name of Entity]

\_\_\_\_\_  
[Mayor/Town Manager]

Dated: \_\_\_\_\_

Rhode Island Department of Transportation  
Title VI/Nondiscrimination Program Assurance

The State of Rhode Island and Providence Plantations, acting through its Department of Transportation (the Department), agrees that as a condition to receiving any federal financial assistance from the U.S. Department of Transportation, the Department will comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-4 (the Act), 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 (the Regulations), and other pertinent anti-discrimination directives that form the basis of the Department'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.

In accordance with the Act, Regulations, and the Title VI/Nondiscrimination Program, no person in the United States shall, on the grounds of race, color, sex, national origin, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Department receives federal financial assistance from the U.S. Department of Transportation, including the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the National Highway Traffic Safety Administration (NHTSA). Moreover, the Department acknowledges that its nondiscrimination obligations extend to all programs and activities of the Department, whether or not such programs and activities are federally-assisted. The Department HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance (the Assurance) is required by subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general Assurance, the Department agrees as follows with respect to its Federal Aid Highway Program:

1. Each "program" and each "facility", as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be conducted (with regard to a "program") or operated (with regard to a "facility") in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. The Department shall insert the following notification in all solicitations for bids for work or material subject to the Regulations:

The Rhode Island Department of Transportation, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-4 and 49 C.F.R. Part 21, Nondiscrimination in Federally-Assisted Programs of the Department

Rhode Island Department of Transportation  
Title VI/Nondiscrimination Program Assurance

of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, age, or disability in consideration for an award.

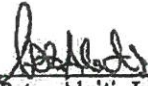
The Department shall also include an adapted form of the above notification in all proposals for negotiated agreements.

3. The Department shall insert the clauses of Appendix A of this Assurance in every contract subject to the Act and the Regulations.
4. The Department shall insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. Where the Department receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.
6. Where the Department receives federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the Assurance shall extend to rights to space on, over or under such property.
7. The Department shall include the appropriate nondiscrimination covenants and clauses set forth in Appendix C of this Assurance, as covenants running with the land where appropriate, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Department with other parties:
  - (a) for the subsequent transfer of real property acquired or improved under the Federal Aid Highway Program; and
  - (b) for the construction or use of, or access to space on, over or under real property acquired, or improved under the Federal Aid Highway Program.
8. This Assurance obligates the Department for the period during which federal financial assistance is extended to its programs, except where the federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the Assurance obligates the Department or any transferee for the longer of the following periods:
  - (a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

Rhode Island Department of Transportation  
Title VI/Nondiscrimination Program Assurance

- (b) the period during which the Department retains ownership or possession of the property.
9. The Department shall provide for such methods of administration for its federally-assisted programs as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such programs will comply with all requirements imposed or pursuant to the Act, the Regulations and this Assurance.
10. The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this Assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Rhode Island Department of Transportation under federally-assisted programs of the U.S. Department of Transportation and is binding on it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest and other participants in the federally-assisted programs of the U.S. Department of Transportation. The person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Rhode Island Department of Transportation.

  
\_\_\_\_\_  
Peter Alviti, Jr., P.E., Director  
Rhode Island Department of Transportation

4/28/2015  
\_\_\_\_\_  
Date

EXHIBIT B

Rhode Island Department of Transportation  
Title VI Assurance

Appendix A

During the performance of this Contract, the contractor, for itself, its assignees and successors in interest (the Contractor) agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Rhode Island Department of Transportation (the Department), 49 C.F.R. Part 21, as they may be amended from time to time (the Regulations), and which are herein incorporated by reference and made a part of this Contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, 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 shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, or disability.
- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Department, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - (a) withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
  - (b) cancellation, termination or suspension of the Contract, in whole or in part.



EXHIBIT B

Rhode Island Department of Transportation  
Title VI Assurance

Appendix A

- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the Department or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Department to enter into such litigation to protect the interests of the Department and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT B

Rhode Island Department of Transportation  
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Appendix B

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that the State of Rhode Island, acting through its Department of Transportation (the Department) will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23 of the United States Code, the regulations for the Federal Highway Administration, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to 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 (the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-4, does hereby remise, release, quitclaim and convey unto the Department all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the State of Rhode Island, acting through its Department of Transportation (the Department) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose involving the provision of similar services or benefits and shall be binding on the Department, its successors and assigns.

The Department, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that:

- (1) no person shall, on the grounds of race, color, sex, national origin, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed;
- (2) the Department shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to 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 as said regulations may be amended; and

EXHIBIT B

Rhode Island Department of Transportation  
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Appendix B

- (3) in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction.<sup>1</sup>

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<sup>1</sup> Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

EXHIBIT B

Rhode Island Department of Transportation  
Title VI Assurance

Appendix C

A. Where the State of Rhode Island, through its Department of Transportation (the Department), subsequently transfers or grants an interest in real property acquired or improved under the Federal Aid Highway Program, the Department shall include the following nondiscrimination covenants in all deeds, licenses, leases, permits, or similar instruments entered into by the Department, pursuant to the provisions of Assurance No. 7(a).

The [Grantee, Licensee, Lessee, Permittee, etc., as appropriate] for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases, add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this [deed, license, lease, permit, etc.] for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the [Grantee, Licensee, Lessee, Permittee, etc.] shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 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 (the Regulations), and as the Regulations may be amended.

B. Where the Department authorizes the construction or use of, or access to space on, over or under real property acquired or improved under the Federal Aid Highway Program, the Department shall include the following nondiscrimination covenant in all deeds, licenses, leases, permits, or similar instruments entered into by the Department, pursuant to the provisions of Assurance No. 7(b).

The [Grantee, Licensee, Lessee, Permittee, etc., as appropriate] for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases, add "as a covenant running with the land"] that

- (1) no person shall, on the grounds of race, color, sex, national origin, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person shall, on the grounds of race, color, sex, national origin, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination; and
- (3) the [Grantee, Licensee, Lessee, Permittee, etc., as appropriate] shall use the premises in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21, Nondiscrimination in Federally-assisted Programs of the Department

EXHIBIT B

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of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964 (the Regulations), and as the Regulations may be amended.

C. The Department shall include the following reverter clause and related language only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**[Reverter Clause for Licenses, Leases, Permits, etc.]**

That in the event of breach of any of the above nondiscrimination covenants, the Department shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

**[Reverter Clause for Deeds]**

That in the event of breach of any of the above nondiscrimination covenants, the Department shall have the right to re-enter said land and the facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of the Department and its assigns.

**DBE SPECIAL PROVISION**

**DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION CERTIFICATION FOR CONTRACTORS AND CONSULTANTS**

With respect to the above numbered RIDOT project, I hereby certify that I am the

(Title) \_\_\_\_\_

and duly authorized representative of \_\_\_\_\_

whose address is \_\_\_\_\_

(City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip) \_\_\_\_\_

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

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

**DEFINITIONS:**

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

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

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

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

A "Regular dealer" is a DBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. In the sale of bulk items, such as cement, asphalt, steel, and stone, a DBE firm may be considered a "regular dealer" if it owns and operates the distribution equipment used to deliver its products. Any additional equipment used by a regular dealer shall be through long-term lease agreements rather than on an ad hoc or contract-by-contract basis.

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

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

"Race neutral" measures or programs are those that are, or can be used to assist all small businesses, including DBE's.

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

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

## Exhibit C

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - i. "Black Americans," which includes persons having origins in any Black racial groups of Africa;
  - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Juvahu, Nauru, Federated States of Micronesia, or Hong Kong;
  - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - vi. Women;
  - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

### I. GENERAL REQUIREMENTS AND SANCTIONS:

- A. Failure by the Contractor to demonstrate every good faith effort in fulfilling its DBE commitment during the construction period will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by percent, and subtracting the dollar value of the work actually performed by DBE contractors. This action will not preclude RIDOT from imposing sanctions or other remedies available as specified in C 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 "C." above and referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. C, Section 1001.
- D. The Disadvantaged Business listings or other available resources may be obtained at the Rhode Island Department of Transportation, Business and Community Resources Office, 2 Capitol Hill Rm 111, Providence, RI. And [www.ri.mhbe.gov](http://www.ri.mhbe.gov).
- E. The utilization of disadvantaged business enterprises is in addition to all other equal opportunity requirements of this contract. The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the contractor will include:
  - a. The number of DBE contractors, subcontractors, and suppliers; and the type of work, materials, or services being performed on or incorporated in this project.
  - b. The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
  - c. Documentation of all correspondence. Contacts, telephone calls, etc., to obtain the services of DBE on this project.
  - d. Copies of canceled checks or other documentation that substantiates payments to DBE firms.
  - e. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by RIDOT and the Federal Highway Administration.
- F. A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification

at the time of the contract execution or the award of contract will be nullified.

EXHIBIT C

## II. PRE-AWARD REQUIREMENTS:

- A. Prior to contract award and within 10 days from the opening of bids, the *contractor/consultant* shall as a minimum, take the following actions to meet the race-conscious goal, hereinafter referred to as the "contract goal", of not less than \_\_\_\_ percent of the contract value to DBE contractors, subcontractors, and/or suppliers:
- (1) Appoint an BEO Officer to administer the Contractor's DBE Obligations.
  - (2) Submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed subcontract agreement(s)/purchase orders, including a detailed description of the work and price, between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE obligation as stated in the Scope of Work. This DBE obligation shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value.
  - (3) Each construction subcontract submitted shall be accompanied by a completed "DBE Utilization Plan" that specifies the items of work to be performed and the contractor's commitment to complete each subcontract entered into with a DBE pursuant to meeting the contract goal stated herein.
  - (4) Any subcontract for materials or supplies provided by a DBE broker, or for other services not provided directly by a DBE firm, shall be accompanied by the RIDOT Broker Affidavit form.
- B. In the event that the cumulative percentages submitted do not equal or exceed the contract goal, RIDOT will conduct a good faith efforts (GFE) review to determine the extent of the prime's efforts to seek out DBEs and afford adequate subcontracting opportunities to meet the contract goal. Evidence in support of the prime's actions must be submitted using RIDOT's Good Faith Effort Form (GFEF). This form contains examples of the types of evidence set forth in 49 CFR Part 26; Appendix A. RIDOT will consider this and other relevant evidence in making its GFE determination.
- (1) Where RIDOT has determined that the prime contractor made every good faith effort to meet the contract goal, the contract shall be awarded.
  - (2) Where RIDOT has determined that the prime contractor failed to make every good faith effort in meeting the contract goal, the contract shall not be awarded, and an opportunity for administrative reconsideration shall be provided.

## III. CONSTRUCTION PERIOD REQUIREMENTS

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

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

The allowable value of a subcontract with a DBE participant will be treated as the commitment of the prime contractor toward meeting the contract goal. The specific rules for counting DBE participation toward meeting the contract goal stated herein are set forth below:

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



Exhibit C

- (a) A DBE performs a *commercially useful function* 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.
- (b) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, RIDOT examines similar transactions, particularly those in which DBEs do not participate. Any firm found to be acting as an extra participant or aiding such practice pursuant to fulfilling a contract commitment is subject to sanctions under Section 1.C.
- (c) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practices for the type of work involved, RIDOT must presume that it is not performing a commercially useful function.
- (d) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. RIDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- (e) RIDOT's decisions on commercially useful function matters are subject to review by the concerned operating unit of the USDOT, but are not administratively appealable to USDOT.
- (f) RIDOT will consider the following factors in determining whether a *DBE trucking company* is performing a commercially useful function: (1) The DBE must be 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.

- (i) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (ii) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (iii) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- (iv) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this paragraph (f) (iv): 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 commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- (v) For purposes of this paragraph (f), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- (g) RIDOT will count *expenditures with DBEs for materials or supplies* toward DBE goals as provided in the following:
  - (i) If the materials or supplies are obtained from a *DBE manufacturer*, RIDOT will count 100 percent of the cost of the materials or supplies toward DBE goals.
  - (ii) 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.
  - (iii) 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 or 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, however.

- (h) If a firm is not currently certified as a DBE by the RIDOA at the time of the execution of the contract, RIDOT will not count the firm's participation toward any DBE goals, except as provided for in 49 CFR 26.87(f).
- (i) RIDOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the contract goal.
- (j) RIDOT will count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

#### B. DBE Replacement and Termination:

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

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

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

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

- (i) The listed DBE subcontractor fails or refuses to execute a written contract;
- (ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (vi) You have determined that the listed DBE subcontractor is not a responsible contractor;
- (vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- (vii) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

#### C. Monthly Payment Certifications:

The Contractor shall provide monthly payment certification to the Department entitled "Certification of Progress Payment" Form. The Department shall provide the Contractor with the certification form as part of our electronic reporting software. The contractor is responsible for their subcontractors' compliance with the submission of their payment reporting by way of this software.

Exhibit C

D. Joint Check Procedure for DBEs

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

- a. The use of the joint check shall only be allowed by exception and shall not compromise the independence of the DBE.
- b. The second party (typically the prime contractor) acts solely as a guarantor.
- c. The DBE must release the check to the supplier.
- d. 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.
- e. The DBE remains responsible for negotiation of price, determining quality and quantity and ordering materials.

IV. FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

Prior to receiving final payment, the Contractor shall provide to the resident engineer certification of the dollars paid to each DBE firm, using Form "DBE Request for Verification of Payment". The certification shall be dated and signed by a responsible officer of the contractor and by the DBE. Falsification of this certification will result in sanctions listed in Section 1.C. and 1.D. of this provision.

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

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

\_\_\_\_\_  
(Signature of Contractor or Consultant)

Date: \_\_\_\_\_

**AMENDMENT ONE**

**Ferry Boarding Dock ADA Improvements Agreement**

**By and Among**

**RHODE ISLAND DEPARTMENT OF TRANSPORTATION /  
THE TOWN OF JAMESTOWN**

**and the**

**Jamestown Newport Ferry (Conanicut Marine Services, Inc.)**

**AGREEMENT** made and entered into by and between the State of Rhode Island and Providence Plantations acting through its Department of Transportation (hereinafter the State) and Conanicut Marine Services, Inc. doing business as Jamestown Newport Ferry (hereinafter Conanicut Marine Services, Inc.) which has as its registered DUNS<sup>1</sup> number: 075689984, and the Town of Jamestown, a municipality formed under the laws of the State of Rhode Island (hereinafter the "Town of Jamestown").

**WHEREAS**, the State is the recipient of Ferry Boat Program funding administered through the Federal Highway Administration under catalog of Federal Domestic Assistance (CFDA) 20.205; and

**WHEREAS**, the State has approved Ferry Boat Program funds and awarded funds under the Ferry Boat Program for the Rhode Island FY2016 and FY2017 designations for the ferry boarding dock ADA improvements to 1 Ferry Wharf in the Town of Jamestown, Rhode Island (hereinafter referred to as "the Docking Facility"); and

**WHEREAS**, the State, Conanicut Marine Services, Inc, and Town of Jamestown entered into an agreement for the ferry boarding dock ADA improvements on November 20, 2018 where the State agreed to contribute \$200,000 of federal and state funds; and

**WHEREAS**, the FHWA awarded 2018 Ferry Boat Program formula funds to Conanicut Marine Services, Inc. in the amount of Ten Thousand, Seven Hundred One Dollars (10,701.00) which Conanicut Marine Services has asked to be put towards the Ferry Boarding Dock ADA Improvements Project

**WHEREAS**, the revised State contribution is up to and not exceeding Two Hundred Ten Thousand, Seven Hundred One Dollars (\$210,701.00) in Ferry Boat Program funding towards the Project; of this

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<sup>1</sup> 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).

amount, Eighty percent (80%), or up to One Hundred Sixty Eight Thousand, Five Hundred Sixty Dollars, Eighty Cents (\$168,560.80) in Federal funds and Twenty percent (20%) or up to Forty Two Thousand, One Hundred Forty Dollars, Twenty Cents (\$42,140.20) in State funds, and the remaining cost of the construction of the project will be funded solely by Conanicut Marine Services, Inc.


**NOW THEREFORE**, in consideration of the foregoing premises and the mutual obligations herein, the State and Conanicut Marine Services, Inc and the Town of Jamestown hereby agree as follows:

- A. Paragraph 6 is deleted in its entirety and replaced with the following:
  - 6. Conanicut Marine Services, Inc will be responsible for payment of all costs associated with design and construction of the Project; the State will reimburse Conanicut Marine Services, Inc up to and not exceeding Two Hundred Ten Thousand, Seven Hundred One Dollars (\$210,701.00) for the construction costs; costs in excess of said reimbursement are the responsibility of Conanicut Marine Services, Inc. Supporting documentation of payment will be required for all reimbursements.
- B. The State reserves the right to terminate this Agreement if state or federal funds are rescinded or not authorized.
- C. 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 Conanicut Marine Services, Inc and the Town of Jamestown have caused this Agreement to be executed by duly authorized officials on the \_\_\_\_\_ day of \_\_\_\_\_, 2019


DEPARTMENT OF TRANSPORTATION:  
RECOMMENDED FOR APPROVAL:

  
ADMINISTRATOR, OFFICE OF TRANSIT  
DATE: 2/26/19


  
CHIEF FINANCIAL OFFICER  
DATE: 3/10/19

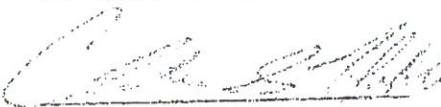
APPROVED AS TO FORM:


  
ASSISTANT DIRECTOR FOR LEGAL SERVICES / CHIEF OF STAFF  
DATE: 3/14/19


  
DIRECTOR  
DATE: 3/14/19

APPROVED AS TO FORM:

  
PRESIDENT  
CONANICUT MARINE SERVICES, INC  
DATE: 4-12-2019

  
LEGAL COUNSEL  
CONANICUT MARINE SERVICES, INC  
DATE: 4/17/19

  
~~ADMINISTRATOR~~  
TOWN COUNCIL PRESIDENT  
TOWN OF JAMESTOWN  
DATE: 4/22/2019

  
TOWN SOLICITOR  
TOWN OF JAMESTOWN  
DATE: 5-6-19