



Town of Bristol, Rhode Island

Department of Community Development

10 Court Street
Bristol, RI 02809
www.bristolri.us
401-253-7000

June 10, 2022

TO: Melissa Cordeiro, Town Clerk

FROM: Diane Williamson, Director

RE: **Amendment One to Subrecipient Agreement**
RIDOT, the Towns of Bristol and Portsmouth, and A&R Marine Corp. - Prudence Island Ferry

2022 JUN 10 PM 4:30

TOWN CLERK'S OFFICE
BRISTOL, RHODE ISLAND

Last year, the Town of Bristol and the RIDOT entered into an agreement for Prudence Island Ferry Dock Improvements at the Bristol terminal with State and Federal Funds.

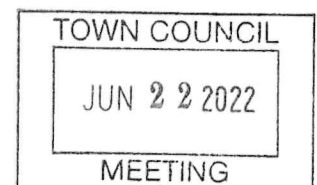
Since that time, additional State and Federal Funds have been received, and with that additional funding, A&R Marine proposes to undertake additional scope of work on the Bristol terminal as well as ferry dock improvements for the ferry terminal located on Prudence Island, in the Town of Portsmouth.

The above reference amendment to the agreement (See attached) is required to add the Town of Portsmouth as a signatory to the Agreement, add work on the Prudence Island terminal, add additional work to the Bristol terminal to the project scope, and move the performance end date to December 30, 2024.

As with the original agreement, this is to utilize State and Federal funds. The Town of Bristol is helping to facilitate the work with administrative support only.

The Town Solicitor's office has reviewed and approved the document. It is requested that this be placed on the June 22 Town Council agenda to authorize the Town Council Chairman to sign the Amendment along with the Town Solicitor.

Thank you.



SUBRECIPIENT AGREEMENT

BY AND AMONG

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

AND THE TOWN OF BRISTOL, RHODE ISLAND

AND THE TOWN OF PORTSMOUTH, RHODE ISLAND

AND THE

PRUDENCE & BAY ISLANDS TRANSPORT (A & R MARINE CORPORATION)

For The

PRUDENCE ISLAND FERRY DOCK AND WATER INFRASTRUCTURE IMPROVEMENTS

AMENDMENT ONE

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 A & R Marine Corp. doing business as the Prudence & Bay Islands Transport (hereinafter A & R Marine) which has as its registered DUNSⁱ number: 117027279, and the Town of Bristol, a municipality formed under the law as of the State of Rhode Island (hereinafter the "Town") and the Town of Portsmouth, a municipality formed under the law as of the State of Rhode Island (hereinafter "Portsmouth"), collectively referred to as the "Towns";

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 under the Ferry Boat Program for the Rhode Island FY2018, FY2019, and FY2020 designation for The Ferry Dock and Water Infrastructure Improvements (hereinafter the "Project"); and

WHEREAS, the State, A&R Marine and Bristol entered into a Subrecipient Agreement, dated July 22, 2021, for Ferry Dock Improvements located at 147 Thames Street, Bristol, RI; and

WHEREAS, utilizing State and Federal funding described in the Subrecipient Agreement, A & R Marine proposes to undertake ferry dock improvements, located on Prudence Island in the Town of Portsmouth; and

WHEREAS, as the owner of the ferry terminal located on Narragansett Avenue, Prudence Island, the Town of Portsmouth has been added a Party to this Agreement.

WHEREAS, A & R Marine agrees to be responsible for the design, construction, and construction administration of the Project and the Towns of Bristol and Portsmouth agree to said design, construction, and construction administration; 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

NOW, THEREFORE, in consideration of the foregoing promises and mutual obligations contained herein, the State and A & R Marine and the Towns agree to delete Paragraphs 1 through 3 and replace with the following, respectively:

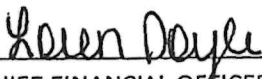
1. The Prudence Island Ferry Dock and Water Infrastructure Repairs will consist of terminal improvements for the landside project located at Town-owned dock located at 147 Thames Street, Bristol, RI and improvements to the docking facility on Narragansett Avenue on Prudence Island, Portsmouth, RI. Major work items in Bristol will include: the construction of a wooden passenger shelter/waiting area to allow passengers to get out of inclement weather; a wooden storage shed to store the ferry operator's materials and supplies; wooden safety railings on the perimeter of the dock; and metal safety gates on the transfer bridge. Additional work to take place at the Bristol terminal includes installation of the prefabricated rubber/steel head piles and the replacement of damaged wooden piles in the current pile clusters. The Project elements for Prudence Island, located at 0855 Narragansett Avenue on Prudence Island, Portsmouth, RI, shall include replacing certain components on the gallows and transfer bridge and replacing the wooden fendering on the metal pile clusters.
2. The A & R Marine will be responsible for design, construction, and construction administration of the Project in accordance with the plans and specifications approved by the State and the Towns shall consent to said design and construction as approved by the State. The Town of Bristol will advertise the construction bid documents on its vendor bidding system on behalf of A&R Marine and will provide administrative support to obtain any construction phase services through the State's Master Price Agreement (MPA) process for A & R Marine.
3. The authorized start date of the Project for reimbursement purposes shall be the purchase order authorization date. Project performance end date will be December 30, 2024.

IN WITNESS WHEREOF, the State by and through its Department of Transportation, and the Towns have caused this Agreement to be executed by duly authorized officials on the _____ day of _____, 2022.

DEPARTMENT OF TRANSPORTATION:
RECOMMENDED FOR APPROVAL:



ADMINISTRATOR, OFFICE OF TRANSIT
DATE: 6/2/22




CHIEF FINANCIAL OFFICER
DATE: 6/9/22

APPROVED AS TO FORM:



ASSISTANT DIRECTOR FOR LEGAL SERVICES
DATE: 6/9/22



DIRECTOR
DATE: 6/9/22

TOWN COUNCIL PRESIDENT
TOWN OF PORTSMOUTH
DATE: _____

TOWN SOLICITOR
TOWN OF PORTSMOUTH
DATE: _____

APPROVED AS TO FORM:

PRESIDENT
A & R MARINE
DATE: _____

LEGAL COUNSEL
A & R MARINE
DATE: _____

TOWN COUNCIL PRESIDENT
TOWN OF BRISTOL
DATE: _____

TOWN SOLICITOR
TOWN OF BRISTOL
DATE: _____

SUBRECIPIENT AGREEMENT

BY AND AMONG

RHODE ISLAND DEPARTMENT OF TRANSPORTATION / TOWN OF BRISTOL, RHODE ISLAND

AND THE

PRUDENCE & BAY ISLANDS TRANSPORT (A & R MARINE CORPORATION)

PRUDENCE ISLAND FERRY DOCK AND WATER INFRASTRUCTURE 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 A & R Marine Corp. doing business as the Prudence & Bay Islands Transport (hereinafter A & R Marine) which has as its registered DUNS¹ number: 117027279, and the Town of Bristol, a municipality formed under the law as of the State of Rhode Island (hereinafter the "Town").

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 under the Ferry Boat Program for the Rhode Island FY2018, FY2019, and FY2020 designation for the ferry dock and water infrastructure improvements at 147 Thames Street, further identified as Assessor's Plat 10, Lot 33, in the Town of Bristol, State of Rhode Island (hereinafter referred to as "the Docking Facility"); and

WHEREAS, the Docking Facility located at 147 Thames Street, further identified as Assessor's Plat 10, Lot 33, in the Town of Bristol, Rhode Island, is located on public property owned by the Town; and

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

WHEREAS, A & R Marine is a registered for-profit Rhode Island business with the registered DUNS number, and

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).

WHEREAS, A & R Marine agrees to be responsible for the design, construction, and construction administration of the Project and the Town of Bristol agrees to consent to said design, construction, and construction administration; 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 A & R Marine and the Town 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 Four Thousand, One Hundred Sixty Seven Dollars and Fifty Cents (\$204,167.50) for the constructions of this ferry dock and water Infrastructure Improvements project; of this amount, Eighty percent (80%), or up to One Hundred Sixty Three Thousand, and Three Hundred Thirty Four Dollars (\$163,334.00) in Federal funds and Twenty percent (20%) or up to Forty Thousand, Eight Hundred Thirty Three Dollars and Fifty Cents (\$40,833.50) in State funds, and if applicable, the remaining cost of the construction of the project will be funded solely by A & R Marine.

NOW, THEREFORE, in consideration of the foregoing promises and mutual obligations contained herein, the State and A & R Marine and the Town agree as follows:

1. The Prudence Island Ferry Dock and Water Infrastructure Repairs will consist of terminal improvements for the landside project located at Town-owned dock located at 147 Thames Street Bristol, RI.. Major work items will include: the construction of a wooden passenger shelter/waiting area to allow passengers to get out of inclement weather; a wooden storage shed to store the ferry operator's materials and supplies; wooden safety railings on the perimeter of the dock; and metal safety gates on the transfer bridge. Additional work to take place at the Bristol terminal includes installation of the prefabricated rubber/steel head piles and the replacement of damaged wooden piles in the current pile clusters.
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 2023.
3. The A & R Marine will be responsible for design, construction, and construction administration of the Project in accordance with the plans and specifications approved by the State and the Town shall consent to said design and construction as approved by the State. The Town will advertise the construction bid documents on its vendor bidding system on behalf of A&R Marine, and will provide administrative support to obtain any construction phase services through the State's Master Price Agreement (MPA) process.

4. The State will monitor the activities of the Town as necessary to ensure that the funds are used for authorized purposes, in compliance with Federal statutes, regulation, and the terms and conditions of this Agreement.
5. Prior to the start of construction, the Town 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. A & R Marine will be responsible for payment of all costs associated with design, construction, and construction administration of the Project; the State will reimburse A & R Marine up to and not exceeding Two Hundred Four Thousand, One Hundred Sixty Seven Dollars and Fifty Cents (\$204,167.50), for the construction of this ferry dock and water Infrastructure Improvements project; of this amount, Eighty percent (80%), or up to One Hundred Sixty Three Thousand, and Three Hundred Thirty Four Dollars (\$163,334.00) in Federal funds and Twenty percent (20%) or up to Fourty Thousand, Eight Hundred Thirty Three Dollars and Fifty Cents (\$40,833.50) in State funds, and if applicable, the remaining cost of the construction of the project will be funded solely by A & R Marine. Supporting documentation of expenditures will be required for all reimbursements.
7. A & R Marine agrees to indemnify, defend and hold harmless the State, the Department, the Town, and their respective officers, employees and agents, from any and all suits, actions, claims, liabilities, damages, losses, penalties, or costs of any character or nature brought on account of any injuries, death, damages sustained by any person or property, or from any violations of local, state or federal laws or regulations, arising out of or from any cause whatsoever in relation to the Project or this Agreement except to the extent caused by the negligent acts or omissions of the State or the Town only. A & R Marine shall acquire insurance at the minimum amounts as specified in the State's Standard Specification for Road and Bridge Construction (latest edition and/or compilation), the State and the Town must be listed as additional insureds and Loss Payees on any such insurance policy, and the State and the Town must be provided a Certificate and Endorsement page as proof. All insurance policies shall provide thirty (30) days' notice of cancellation to the State and the Town.
8. A & R Marine 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. A & R Marine and the Town will maintain all financial records.
9. Pursuant to the provisions of Title 37, Chapter 14.1, of the General Laws of the State of Rhode Island 1956, as amended, regarding Minority Business Enterprises or MBE's and state funds , or

49 CFR part 26, regarding Disadvantaged Business Enterprises or DBE's and federal funds, these businesses shall have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. A & R Marine shall be solely responsible for certifying compliance pursuant to the above State or Federal law.

- 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 Agreement. 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 A & R Marine is ready to award a contract, the contract documents must include the DBE Special Provisions contained in Exhibit C of the Agreement.
10. Pursuant to EEO 11246 and 41 CFR Part 60, a contractor-based program to provide on-the-job training (OJT) must be approved by the 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.
 11. As a condition to receiving any federal financial assistance from the FHWA through the State, A & R Marine 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, A&R Marine Corp., 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.
 12. In accordance with the Code of Federal Regulations, 23 CFR 633.102(e), "The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and further require their inclusion in any lower tier subcontract that may in turn be made. The required contract provisions of Form FHWA-1273

shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements contained in the provisions of Form FHWA-1273." A copy of Form FHWA 1273 can be found at <http://www.fhwa.dot.gov/programadmin/contracts/>. Modifications to the provisions of Form FHWA-1273 are not allowed.

13. Similarly, pursuant to obligations imposed under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d – 2000d-4, 23 CFR 200.9 and 49 CFR 21.7, the contractor shall include in every subcontract the provisions of paragraphs (1) through (6) of the attached Title VI Assurances, [See Exhibit B, Appendix A, Pages A-1 and A-2], unless exempt by regulations or directives issued pursuant to 49 CFR Part 21.
14. Public Law 109-282, the Federal Funding Accountability and Transparency Act of 2006 as amended (FFATA), requires full disclosure of all entities and organizations receiving federal funds including grants, contracts, loans and other assistance and payments through a single publicly accessible Web site, USASpending.gov.
 - A. In accordance with the Federal Fiscal Accountability Transparency Act (FFATA) and State of Rhode Island policy, all recipients and sub-recipients of federal funds must have a valid DUNS number² and be registered with the *System for Award Management*.³
 - B. A & R Marine 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 A & R Marine DUNS number, and select "Export PDF." Submit SAM Search Results PDF form with this Agreement.
 - C. A & R Marine is required to maintain active registration in the *System for Award Management*. Registration must be reviewed and updated on a yearly basis prior to expiration date.
15. A & R Marine 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, A & R Marine 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 A & R Marine 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 A & R Marine 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.

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

- C. The Audit Reports shall comply with the requirements as outlined in OMB Uniform Guidance 2 C.F.R. 200.501.
 - D. A & R Marine 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 Town will adhere to the applicable OMB Uniform Guidance at 2 C.F.R. 200.501 compliance requirements for projects funded under CFDA number 20.205.
16. A & R Marine 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. A & R Marine 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 final PS&E stage of design. Such submissions will include but not be limited to all engineering, landscaping, and permitting requirements, as applicable to the Project.
 - B. The State will respond to the submissions within thirty (30) days of their receipt.
 - 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 A & R Marine of full responsibility with respect to errors and omissions.
17. A & R Marine will work with the State to obtain an Environmental Determination of no significant impact on the Project in accordance with 23 CFR Part 771.117. Neither right-of-way actions nor construction of the project may proceed until an Environmental Determination has been received.
18. A & R Marine 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, A & R Marine 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. A & R Marine shall be responsible for ensuring that materials incorporated into the Project are in conformance with State Standards and Specifications.
 - i. A & R Marine 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. A & R Marine shall obtain certificates of compliance and mill certifications in accordance with the approved Materials Testing Schedule.
 - v. A & R Marine 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. A & R Marine 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. A & R Marine 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. A & R Marine shall notify the State in writing of the anticipated start date of construction. Notification shall be delivered by hand, electronic mail, 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

19. The following are the General Program Requirements for the submission of reimbursement requests by A & R Marine.

A. A & R Marine 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. A & R Marine 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 A&R Marine."

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

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

- i. Final Inspection Report
- ii. Corrective action plan(s) and Certification for Punch List Resolution
- iii. RIDOT's Certificate of Completion & Final Acceptance certifying that the Project has been completed accordance with the contract documents
- iv. DBE Request for Verification of Payment
- v. Certification for Prevailing Wage (Davis Bacon) Rate
- vi. Anti-Collusion Certification for Contract and Force Account
- vii. Certification Regarding Debarment, Suspension, and Other Responsibility Matters Appendix A - Primary Covered Transactions and Appendix B - Lower Tier Covered Transactions.
- viii. Materials, Certificates of Compliance & Mill Tests Certification
- ix. Copy of Single Audit Report(s) issued in years in which work was performed if applicable.
- x. Equal Employment Opportunity Certificate of Compliance
- xi. A copy of As-Built Plans


21. A & R Marine and the Town and State agree that no work associated with relocation of utilities underground shall be subject to reimbursement as part of this project.

22. During the course of the Project and for three years thereafter, A & R Marine agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as RIDOT may require. Project closeout does not alter these requirements.
23. The State reserves the right to have access to any documents, papers or other records of the Town 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 A & R Marine personnel and Town 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 completion of the Project, A & R Marine 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.
26. A & R Marine and the Town shall indemnify, defend, protect, and hold harmless RIDOT from any claims or liability for damages, losses, or injuries (including claims for attorneys' fees and other costs) relating to or arising from services provided or activities conducted by A&R Marine or the Town or its agents or employees pursuant to this Agreement.
27. All costs billed under this Agreement are subject to audit. The Town 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.
28. If any provision of this Agreement is held invalid, all remaining provisions of this Agreement shall continue in full force and effect to the extent not inconsistent with such holding.
29. The State reserves the right to terminate this Agreement if state or federal funds are rescinded or not authorized.
30. This Agreement may not be altered or amended unless done in writing, appended hereto, and executed by all parties who have endorsed the original agreement.

IN WITNESS WHEREOF, the State by and through its Department of Transportation, and the Town have caused this Agreement to be executed by duly authorized officials on the _____ day of _____, 2021.

DEPARTMENT OF TRANSPORTATION
RECOMMENDED FOR APPROVAL:


ADMINISTRATOR, OFFICE OF TRANSIT
DATE: 6/29/21



CHIEF FINANCIAL OFFICER
DATE: 7/1/21

APPROVED AS TO FORM:

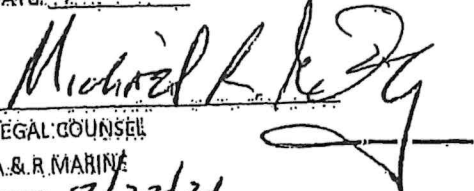

ASSISTANT DIRECTOR FOR LEGAL SERVICES
DATE: 7/1/21

DIRECTOR
DATE: 7/2/21

APPROVED AS TO FORM:



PRESIDENT
A & R MARINE
DATE: 7-22-21


LEGAL COUNSEL
A & R MARINE
DATE: 7/22/21



TOWN COUNCIL PRESIDENT
TOWN OF BRISTOL
DATE: 7/7/21

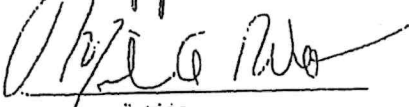

TOWN SOLICITOR
TOWN OF BRISTOL
DATE: 7/6/21

EXHIBIT A



RIDOT DBE UTILIZATION PLAN

Project Name: _____

RIC No.: _____ FAP No: _____

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

The following correctly represents our DBE participation in accordance the RI DOT DBE Special Provision and 49 CFR 26.65. Should any of the services performed and materials provided by the DBEs listed below involve a third party or otherwise be found not to comply with the manner in which counted here, we understand that our firm may be found in non-compliance with the requirements of its contract.

PART B

- The prime must initial all statements below.

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

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

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

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

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

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

Signature

date

RIDOT DBE UTILIZATION PLAN

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

Total DBE Credit \$ _____
 Total Bid Price: \$ _____

Percentage of DBE participation on this Project _____ %

EXHIBIT B



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

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

Signature of Authorized Official

Date

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and Instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- o Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- o The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- o Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on

- the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

Last Update: November 2017

EXHIBIT C

06/06/2011

DBE SPECIAL PROVISION

DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION CERTIFICATION FOR CONTRACTORS AND CONSULTANTS

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

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

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

DEFINITIONS:

"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 DBE's.

Race neutral measures (goals) 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 DOT-assisted contracts, a small-business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (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:

- (a.) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (b.) 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, Juvalu, 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 the established DBE percentage (listed in Section II. A. below), and subtracting the dollar value of the work actually performed by DBE contractors. This action will not preclude RIDOT from imposing sanctions or other remedies available as specified in paragraph (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 paragraph (B) above and referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, USC Section 1001.
- D. The Disadvantaged Business listings or other available resources may be obtained at the Rhode Island Department of Transportation, Business and Community Resources (OBCR) Office, 2 Capitol Hill Room 111, Providence, RI 02903, or at www.ri.mbe.gov.

- E. The utilization of disadvantaged business enterprises is in addition to all other equal opportunity requirements of this contract. The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the Contractor shall include:
1. The number of DBE contractors, subcontractors and suppliers; and the type of work, materials or services being performed on or incorporated in this project.
 2. The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
 3. Documentation of all correspondence, contacts, telephone calls, etc. necessary to obtain the services of DBEs on this project.
 4. Copies of canceled checks or other documentation that substantiates payments to DBE firms.
 5. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by RIDOT and the Federal Highway Administration.
- F. A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification at the time of the contract execution or the award of contract will be nullified.

II. PRE-AWARD REQUIREMENTS

- A. Prior to contract award and within ten (10) days from the opening of bids, the contractor/consultant shall, at a minimum, take the following actions to meet the race-conscious goal, hereinafter referred to as the 'contract goal', of not less than 15.00 percent of the contract value to DBE contractors, subcontractors and/or suppliers:
1. Appoint an EEO Officer to administer the Contractor's DBE obligations.
 2. Submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed subcontract agreement(s)/purchase orders, including a detailed description of the work and price, between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE obligation as stated in the Scope of Work. This DBE obligation shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value.
 3. Each construction subcontract submitted shall be accompanied by a completed "DBE Utilization Plan" that specifies the items of work to be performed and the contractor's commitment to complete each subcontract entered into with a DBE pursuant to meeting the contract goal stated herein.
 4. Any subcontract for materials or supplies provided by a DBE broker, or for other services not provided directly by a DBE firm, shall be accompanied by the RIDOT Broker Affidavit form.
- B. In the event that the cumulative percentages submitted do not equal or exceed the contract goal, RIDOT will conduct a good faith effort (GFE) review to determine the extent of the prime contractor's efforts to seek out DBEs and afford adequate subcontracting opportunities to meet the contract goal. Evidence in support of the prime's actions must be submitted using RIDOT's Good Faith Effort Form (GFEF). This form contains examples of the types of evidence set forth in 49 CFR Part 26, Appendix A. RIDOT will consider this and other relevant evidence in making its GFE determination.
1. Where RIDOT has determined that the prime contractor made every good faith effort to meet the contract goal, the contract shall be awarded.
 2. Where RIDOT has determined that the prime contractor failed to make every good faith effort in meeting the contract goal, the contract shall not be awarded, and an opportunity for administrative reconsideration shall be provided.

III. CONSTRUCTION PERIOD REQUIREMENTS

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

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

The allowable value of a subcontract with 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.
 - (a.) A DBE performs a commercially useful function (CUF) when it is responsible for execution of the work of the contract, and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a 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 I.C.
 - (c.) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of the contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, 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.) above, 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 practice.
 - (e.) RIDOT's decisions on commercially useful function matters are subject to review by the concerned operating unit of the USDOT, but cannot be administratively appealed to the USDOT.
 - (f.) RIDOT will consider the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- (i) 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.
- (ii) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- (iii) 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.
- (iv) 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.
- (v) The DBE may also lease trucks from a non-DBE firm, including 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 paragraph (v) above: 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.
- (vi) 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(i).
- (i.) RIDOT will not count toward the contract goal the dollar value of work performed under a contract with a firm after it has ceased to be certified as a DBE.
- (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 Part 26.53 good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. 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;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. 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;
6. You have determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. 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 certifications to the Department entitled "Certification of Progress Payment". The Department will 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.

D. Joint Check Procedure for DBEs:

A prime contractor 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 contractor 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:

1. The use of the joint check shall only be allowed by exception and shall not compromise the independence of the DBE.
2. The second party (typically the prime contractor) acts solely as a guarantor.
3. The DBE must release the check to the supplier.
4. The subcontract agreement must reflect the total contract value, including the cost of materials and installation; actual payments for work performed by the DBE may reflect labor only.
5. 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 Payment". The certification shall be dated and signed by a responsible officer of the Contractor and by the DBE. Falsification of this certification will result in sanctions listed in Sections I.C. and I.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 subcontractor on the "Certification of Progress Payment" form, the Prime Contractor shall release all retainage held by the Prime Contractor within thirty (30) days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed form within ten (10) days of receipt of payment.

(Signature of Contractor or Consultant)

(Date:)

