

BLACKSTONE RIVER NAVIGATION SYSTM
CENTRAL FALLS ENHANCEMENT PROJECT (PHASE 2)
STP-TEA2 (014)

DESIGN, CONSTRUCTION, AND MAINTENANCE AGREEMENT

By and between the

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

And the

CITY OF CENTRAL FALLS

AMENDMENT TWO

Agreement made and entered into by and between the State of Rhode Island and Providence Plantations through its Department of Transportation (the State) and the City of Central Falls (the City/Town).

WHEREAS, the State is the recipient of funding from the United States Department of Transportation, administered through the Federal Highway Administration (FHWA); and

WHEREAS, the State and the City entered into a Blackstone River Navigation System, Central Falls Enhancement Project (Phase 2) Design, Construction, and Maintenance Agreement dated July 22, 2003, and Amendment #1 dated November 2, 2006 for the purpose of design and construction of the project; and

WHEREAS, the State and the City wish to enter into an agreement whereby the City provides sub-recipient assurances under Title VI of the Civil Rights Act of 1964 and related non-discrimination provisions.

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

1. The City is a sub-recipient of federal financial assistance from FHWA through the State.
2. As a condition to receiving any federal financial assistance from the FHWA through the State, the City is subject to and must comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-4, 49 C.F.R. Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and other pertinent anti-discrimination directives that form the basis of the State's Title VI/Nondiscrimination Program, including 23 U.S.C. § 109(h); 23 U.S.C. § 324; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Title VIII of

the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 – 3619; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601 – 4655; the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 – 6107; Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 – 12165; 49 U.S.C. § 5332; Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; Executive Order No. 13166, Improving Access to Services for Persons with Limited English Proficiency; and the requirements detailed in the Rhode Island Department of Transportation Title VI/Nondiscrimination Program Assurance, attached to this Amendment Two, marked Attachment A, and incorporated and made part of this Amendment Two by reference.

3. This sub-recipient assurance is given in consideration of and 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 City.

4. Terms not changed stay in full effect except as modified herein.

THIS SPACE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the State and the City have caused this Amendment Two to be executed by their duly authorized officials this _____ day of _____, 2014.

RECOMMENDED FOR APPROVAL:

Kay Fowl
CHIEF ENGINEER
DEPARTMENT OF TRANSPORTATION
DATE: 9/30/14

Robert V. Finley
CHIEF FINANCIAL OFFICER
DEPARTMENT OF TRANSPORTATION
DATE: 10-2-14

Reviewed per F.S.A.

Leonard Morganis
Administration & Finance Officer

APPROVED:

[Signature]
DIRECTOR
DEPARTMENT OF TRANSPORTATION
DATE: 10-3-14

[Signature]
MAYOR
CITY OF CENTRAL FALLS
DATE: 11/24/14

APPROVED AS TO FORM:

[Signature]
EXECUTIVE COUNSEL
DEPARTMENT OF TRANSPORTATION
DATE: 9/26/14

[Signature]
CITY SOLICITOR
CITY OF CENTRAL FALLS
DATE: 11/21/14

EXAMINED AND APPROVED:

[Signature]
for DIVISION ADMINISTRATOR
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
DATE: 10/6/14

ATTACHMENT A

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.

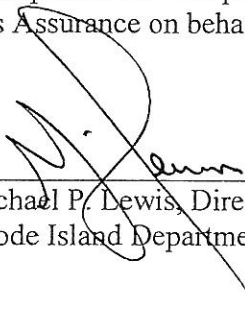
The Department shall also include an adapted form of the above notification in all proposals for negotiated agreements.

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.



Michael P. Lewis, Director
Rhode Island Department of Transportation

5/15/11

Date

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.

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.

Rhode Island Department of Transportation
Title VI Assurance

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

Rhode Island Department of Transportation
Title VI Assurance

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.¹

¹ 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.

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

Rhode Island Department of Transportation
Title VI Assurance

Appendix C

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.