

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CONSERVATION AND RECREATION
RECREATIONAL TRAILS PROGRAM**

Grant Award Recipient:

Award Date:

Grant Contract ID:

FAIN Number:

Catalogue of Federal Domestic Assistance (CFDA): Recreational Trails Program, 20.219

Department of Conservation and Recreation Indirect Rate:

GRANT AGREEMENT

The Recreational Trails Grant contract between (Grantee) and the Department of Conservation and Recreation (DCR) for the (Title) project has been approved. Upon signature of this document by the Project Manager or authorized signatory, (Grantee) may proceed to incur direct and matching expenses in relation to this contract.

1. GENERAL PURPOSE

The (Grantee) agrees to perform, as outlined in your application and any approved revisions, services related to (Title) project, in accordance with all regulations, policies and procedures set forth in the federal Recreational Trails Program (<http://recreationaltrailsinfo.org/>).

2. TERM OF GRANT CONTRACT

This grant contract is effective from the date of your signed contract to **(Contract End Date)**. No direct or matching expenses may be documented or reimbursed under this contract outside of this period.

3. GRANT TOTAL

The maximum amount of funds available to the Grantee pursuant to this agreement shall be **(Grant Award)**. It is further understood and agreed that the Grantee shall only be reimbursed on the basis of actual costs incurred, and that the State's determination of eligible and approved costs shall be final in all cases.

It is understood and agreed that all payments of all sums by the State hereunder are contingent upon availability and continued appropriation of federal funds, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, the State may terminate this grant in whole or part immediately. Any funds awarded but not applied for by the Grantee on the project termination date shall lapse.

4. COST SHARING PROVISIONS

The grantee will be required to provide adequate documentation in a format that fully accounts for and certifies that the matching funds or in-kind services have been, in fact, incurred on the

project. The grantee must document a minimum of 20% of the total project cost. The proposed match for this project, stated in the grant proposal, is **(Proposed Match)**.

The grantee must submit documentation of the total match as proposed in the grant application. The grantee must submit a revised budget or scope for approval by DCR if the proposed match amount needs to be amended.

Documentation of 20% of each reimbursement request must be provided, meaning, if there are multiple reimbursement requests submitted by the grantee, each request must contain documentation of at least 20% match of that particular reimbursement request total.

5. PROJECT COMPLETION REQUIREMENTS

A project shall not be complete until a **Final Report** has been submitted with the final reimbursement request and a **Site Visit** by a qualified DCR representative has been conducted. The final reimbursement is contingent upon a satisfactory review of the project, including completing the proposed scope as outlined in the project proposal and consistency with the proposed budget.

6. AMENDMENT OF GRANT CONTRACT

The Grantee shall not amend, revise, or change the approved application, scope or budget (including the proposed match) without the written consent of the DCR. Requests for a revised scope or budget must be submitted in writing and approved by DCR before the Grantee may proceed with the changes. If the change is not submitted to DCR and approved, all costs associated with the change will not be reimbursed. Changes to on-the-ground grant tasks will require federal regulatory review and approval, which could take 6 months or longer. The Grantee must consider and exhaust all other possibilities before requesting a change of this nature, which requires additional staff time on the state and federal level to approve.

7. EXTENSION OF GRANT CONTRACT

In certain cases, projects are delayed for unforeseen reasons. In these cases it may be possible to extend your contract end date. Requests for contract extensions **must be** submitted in writing at least 45 days prior to the contract end date, and will only become valid upon issuance of a Contract Amendment signed by DCR. Grantees may only apply for one contract extension for a maximum of one year. No additional contract amendments will be granted.

8. TERMINATION OF GRANT CONTRACT

Any failure by the Grantee to abide by or carry out any of the terms or conditions of this grant shall, at the discretion of the State, result in termination of this grant, if, after notice to the Grantee, said default is not remedied within ten (10) days. In the event of termination, no further payments shall be made by the State.

9. EQUIPMENT PURCHASES

Equipment is defined as tangible personal property having a useful life of at least one year and a per-unit acquisition cost of \$5,000 or greater. The equipment title will rest with the grantee and must be used for the proper authorized use as stated in the project proposal. The Grantee is required to use the equipment for its proposed and intended purpose for a **reporting period of five years**. See Appendix B for federal requirements for the purchase of equipment.

10. BUY AMERICA

The Grantee is required to comply with the U.S. Department of Transportation Buy America provision as described in Title 23 United States Code, Section 313 (see <https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>). All steel, iron and manufactured products containing steel or iron must be produced in the United States, unless a waiver is granted. The Grantee must provide documentation to authenticate the product as Buy America compliant. If the grantee can show that the product needed to complete the RTP project is not manufactured in the U.S. and there is no viable alternative, then the Grantee can apply for a waiver with the federal government which, if granted, would allow for an exception to the rule for that particular project only. There is no guarantee that a waiver will be granted and the timeline for granting of waivers is uncertain.

11. LAND OWNERSHIP

Proposals for projects that will take place on land that is not owned or managed by the applying organization must include a signed statement from the landowner or manager specifically authorizing the project and ensuring that the property is open for continuing public access. If the project will take place on private land, an easement for public access with a commitment of no less than 10 years must be in place prior to the grant award. If there is a Conservation Restriction (CR) on the parcel, the CR holder must provide written authorization for the project as well. A plan for ongoing stewardship and continued communication must be formalized between the grant applicant and the landowners (or CR holders), for a period of no less than 10 years.

12. ACQUISITIONS

Projects involving land acquisition must obtain an appraisal of the land to be acquired, as well as a review of the appraisal by an independent review appraiser. The review appraiser must certify that the appraisal meets the standards of the Uniform Appraisal Standards for Federal Land Acquisitions, found at <http://www.usdoj.gov/enrd/land-ack/>. Projects involving land acquisition must also conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et seq., as amended, found at <http://www.fhwa.dot.gov/realestate/ua/index.htm>. These regulations apply to evaluating the acquisition of real property and any potential displacement activities.

13. RECREATIONAL TRAILS PROGRAM ACKNOWLEDGEMENT SIGNS

The Grantee shall display formal and permanent recognition/acknowledgment of the Recreational Trails Program at the project site or affixed on equipment purchased through the program. Signs should be constructed of sturdy material that is permanent, large enough to be clearly visible and located at a prominent access point to the project area. The suggested language identifies the site as a cooperative venture (i.e. “A Cooperative Trail Project between the ‘Name of Municipality/Org.’ and the Recreational Trails Program”). Any printed materials such as trail brochures, celebration announcements or website information should also identify the financial partnership that made the project a reality. Stickers or decals shall be printed and displayed on all equipment purchased with RTP funding. **It is also encouraged that the Grantee develop and distribute a press release upon the award of the grant and/or project completion, acknowledging the Recreational Trails Program as a source of funds for the project.**

14. COMMUNITY AND STAKEHOLDER OUTREACH

It is the responsibility of the Grantee to manage and perform necessary outreach and notifications to the community, stakeholders and abutters of the project area. Any community concerns or issues regarding the project will be addressed and managed by the Grantee. It is the Grantee’s responsibility to have all permissions and approvals in place prior to trail construction or maintenance work. Receipt of grant funds is not to be construed as authorization of the project.

15. PROJECT PROGRESS REPORTS

The Grantee shall submit **Bi-annual Project Progress Reports** for the term the grant is active. Reports shall be submitted by **September 15th and March 15th**. The report should briefly outline past work and accomplishments, and provide a plan for future work.

The Grantee shall submit a **Final Project Report** along with their final Request for Reimbursement. This report shall document the project’s goals, accomplishments, barriers encountered and lessons learned. A map indicating the location of the project and any pictures should also be included. A template for the Progress Report and Final Report are available on the Massachusetts Recreational Trails Program website, or a copy can be provided by DCR upon request.

An Equipment Report on the condition, use and location of property defined as equipment purchased with grant funds shall be submitted **biannually (twice a year), for a period of five years following the project end date.**

16. CONSTRUCTION INSPECTION REPORT; AUDITS

Project progress inspections may be conducted by State or Federal representatives. State representatives may, at any time, inspect the project and review the Grantee's records and files. Upon notification of project completion, the State may inspect projects and prepare a written report. Recommendations for corrective actions will be made, if appropriate. A copy of the report will be sent to the Grantee. Deficiencies, if any, shall be corrected and reported, in writing, to the State within twenty-one (21) days of receipt of the inspection report. Final payment will not be made until deficiencies are corrected. The Grantee agrees to submit to all

requested inspections and audits by State and Federal officials which relate to the services and payments under this grant.

17. REIMBURSEMENT

The State agrees to reimburse the Grantee **up to the approved grant amount** for approved expenses incurred in accordance with the project budget subject to the following:

- a. It is understood and agreed by the parties that in the performance of this grant and the services hereunder, the Grantee and its servants and employees are in all respects independent contractors and shall neither be determined to be employed by, nor agents of, the State, nor be entitled to any benefits provided by the State to its employees.
- b. The grantee must pay 100 percent of the cost of an item before submitting a request for reimbursement of eligible costs. For example, a grantee may not apply for reimbursement for a piece of equipment for which they have set up a loan agreement and monthly payment plan. The equipment must first be paid in full by the entity indicated on the state contract before any reimbursement will be authorized.
 - i. When requesting reimbursements, the Grantee shall submit **invoices/receipts** for actual costs incurred. All invoices/receipts must show dates within the contract period.
 - ii. The Grantee must also submit **proof of payment** (such as a cancelled check or credit card statement) of the invoice by the Grantee. All payments must be traced from the invoice/receipt to proof of payment by the entity on the state contract.
 - iii. For **major equipment** purchased through the program (such as a snow groomer), a receipt from the vendor indicating the equipment has been delivered and paid in full, including name, serial number, year of manufacture, accessories received and price from seller, shall also be submitted.
 - iv. For requests of reimbursement of **staff time**, time sheet records indicating dates and hours spent on the project, tasks accomplished and billing rates must be submitted. Proof of payment to the staff must also be submitted, such as payroll records or copies of pay stubs. The hourly rate must be clearly displayed, or a letter from the organization stating the hourly rate of each employee must be provided. Indirect/fringe costs can be included. A letter from the organization stating the indirect cost rate must be included for verification of the rate.
 - v. If a third party has made a purchase on behalf of the grantee, the original invoice/receipt must be documented as well as proof of that direct payment, as in a copy of the credit card statement of the third party showing the transaction. Then, proof of payment to the third party by the Grantee must be submitted, (e.g. a cancelled check).
- c. The Grantee may submit multiple reimbursement requests, on a monthly basis at most, during the grant period.
- d. The Grantee may submit the final reimbursement request up to 3 months after the contract has expired. After three months, the reimbursement will no longer be processed.

- e. The Grantee will submit a Final Report with the final reimbursement request.
- f. The Grantee's final reimbursement will be held until a site visit has been conducted by the RTP Grant Manager.
- g. **The purchase of food is not an applicable cost for trail grant funding. Do not submit a reimbursement request for food as a part of your grant expenditures or as match.**

18. MATCH

The Grantee shall document incurred **match** with each reimbursement request. The Grantee must document a match of 20% of the total project value with each reimbursement request.

- a. Any match that is actual cash spent towards the project must be documented with the same requirements as the reimbursement requests. Invoices and proof of payment are required.
- b. Volunteer labor as match must be documented with time sheets including names, dates, hours worked, description of work accomplished and value of those hours for every hour claimed. Sample spreadsheets can be provided by the RTP Grants Administrator upon request.
- c. Staff time utilized as match requires a spreadsheet showing dates, names, hours worked, description of grant-related work and value of those hours for every hour claimed. Proof of payment to the employee must be provided as well, either in the form of copies of paystubs or a payroll report. The hourly rate must be clearly displayed, or a letter from the organization stating the hourly rate of each employee must be provided. Indirect costs/fringe can be included. A letter from the organization stating the indirect cost rate must be included for verification of the rate.
- d. Donations must be documented with a written statement from the entity that has made the donation, stating their donation, its value and to whom it was given. Proof of the value of the donation must also be submitted, either by an invoice, receipt, or another form of valuation, such as the most current value listed on a website where comparable products are sold.

19. PROCUREMENT PROCEDURES

The Grantee will adhere to the Federal Guidelines for Procurement Procedures (Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) available for viewing online at <https://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1>.

RTP Grantees may follow their own established written procurement procedures, however, any procedures relating to the grant project must provide for the following, at minimum:

- a. Grantees' avoidance of purchasing unnecessary items.
- b. Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement.

- c. When purchasing an item with a value between \$3,000 and \$150,000, grantees are required to obtain at least three bids for goods and/or services. The solicitations must provide for all of the following:
 - i. A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 - ii. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
 - iii. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 - iv. The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation.
 - v. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - vi. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

If the grantee does not have established written procurement procedures, the grantee accepts and agrees to follow the above procurement policy in place of its own requirements.

20. RECORD RETENTION

All program and financial records shall be retained by the Grantee for State and Federal audit purposes and available for public inspection for a period of three (3) years *after* the final payment on the project.

At a minimum the following records shall be maintained and made available for audit; invoices, for purchased materials and for all design and construction costs indicating check number and date paid on each invoice, cancelled checks or copies thereof, bid, solicitation, and procurement documents, work changes, change orders and contract amendments.

Record retention for purchases of items \$3,000 or more must include, at minimum, documentation which provides the basis for contractor selection, justification for lack of competition when competitive bids or offers are not obtained, and a basis for the award cost or price.

21. COMPLIANCE WITH STATE AND FEDERAL REGULATIONS

The Grantee agrees to insure that the project complies with all applicable state and federal regulations, including, but not limited to, the following:

- **Federal RTP Guidance:** Guidance for the administration of the Recreational Trails Grants Program is listed at: <http://recreationaltrailsinfo.org/>

- **Wetlands and Rivers Protection**

Any project that alters land within 100 feet of a wetland or 200 feet of a river or stream (or that meets any other condition of the Rivers or Wetlands Protection Act) will require the approval of the local Conservation Commission before any construction can proceed.

- **Endangered Species Protection**

Any project that occurs within priority habitat or estimated habitat as indicated by the most recent atlas published by the Massachusetts Natural Heritage and Endangered Species Program (NHESP) will require a filing and possibly a permit from the NHESP before construction can proceed.

- **Historic Preservation**

All Recreational Trails Projects that disturb the soil or impact historic resources require review by the DCR archeologist and the Massachusetts Historic Commission for compliance with the National Historic Preservation Act.

Any project that requires review or a permit for wetlands, endangered species or historic resource protection must secure the appropriate documentation of the review or permit and those must be on file at the offices of the DCR Greenways and Trails Program before the trail project can begin.

22. TITLE VI/NONDISCRIMINATION ASSURANCES

The Grantee shall comply with the assurances included in the Federal Highway Administration Assurances for Title VI and Other Nondiscrimination Statutes and Regulations, attached and incorporated in this grant agreement. The Grantee will review and sign this document on page 6, returning the original copy to the grant program administrator (see Appendix A).

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

This grant is funded in whole, or in part, by the Federal Highway Administration, United States Department of Transportation (US DOT). As such, the requirements at **49 Code of Federal Regulations (CFR) Part 26: Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs** apply to this grant, as set forth below:

a. Nondiscrimination Assurance

The Grantee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of the requirements of 49 CFR Part 26. The Grantee shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts. The Massachusetts Department of Transportation's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, has been adopted by the Massachusetts Department of Conservation and Recreation, and is incorporated by reference in this agreement. Implementation of this program is a legal

obligation. ***The Recreational Trails Program Coordinator will assist all grantees in guidance and implementation of this program.*** Failure to carry the terms of the DBE Program shall be treated as a violation of this grant agreement. Upon notification to the Grantee of its failure to carry the applicable requirements, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Grantee, before solicitation of any contract in excess of \$30,000, shall consult with DCR and follow all required steps in assuring compliance with 49 CFR Part 26. The DCR may determine a DBE goal to be appropriate on certain contracts let under this grant. DCR will notify the grantee of any goals established and guide and assist through the process of complying with that goal. A DBE goal defines a certain percentage (e.g. 10%) of that project which should be awarded to a DBE. The establishment of a goal will consider the types of materials, categories of work, and location of the project. The Grantee shall be required to implement any DBE goal assigned by the DCR. If required by DCR, the Grantee shall insert into any contracts resulting from this grant a copy of the DCR/ MassDOT DBE Special Provisions. These provisions provide specific instruction to contractors concerning their obligations and procedures to be followed on contracts containing DBE participation goals. Subsequent to the grant award but prior to letting any contract with an established DBE goal, the Grantee is required to submit either evidence that the apparent low bidder met the goal or its good faith efforts to do so.

b. Reporting

The Grantee shall provide the DCR with the names and addresses of bidders responding to contract solicitations under this grant (**Bidder's List Form**). The Grantee shall also provide the DCR with the value of each prime and subcontract subsequently awarded. This information shall be provided and included as a part of the Request for Reimbursement process. The Grantee further agrees to cooperate fully with the DCR in obtaining information or records from its contractors to satisfy the DBE Program requirements.

c. Contract Assurance

The Grantee will ensure that the following language/provisions are placed in every contract and subcontract that is partially or fully funded by the Recreational Trails Program:

Non-Discrimination Assurance: *“The contractor or subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as (Name of Recipient/Grantee) deems appropriate.”*

Prompt Payment Language: *“The Contractor agrees to make payment in full, including retainage, to each subcontractor not later than ten (10) business days after the subcontractor has completed all of the work required under its subcontract.”*

Bidder's List: *“All official bidders will be required to report the names, addresses and telephone numbers of all firms that submitted bids or quotes in connection with this project.”*

Form 00859 – Contractor's Sub Certification Form

For grants subject to DBE reporting (grants where a goal has been established), the Grantee shall insert a copy of the following forms in any contract(s) let under this grant, including:

1. MassDOT Form 00719 (Attachment A) – Special Provisions for Participation by Disadvantaged Business Enterprises;
2. MassDOT Form 00760 - FHWA-1273 -- Required Contract Provisions for Federal-Aid Construction Contracts -Revised May 1, 2012;
3. MassDOT Form B00853 – Schedule of Participation by DBEs;
4. MassDOT Form B00854 – Letter of Intent by DBE;
5. MassDOT Form B00855 - DBE Joint Check Arrangement Approval FORM;
6. MassDOT Form B00856 - Joint Venture Affidavit;
7. Form 00859 – Contractor’s Sub Certification Form;
8. MassDOT Form 00870 - Standard Federal Equal Employment Opportunity Construction Contract Specifications - (Federal Executive Order 11246);
9. FHWA Sub-Recipient Non-Discrimination Assurances- Appendix A;
10. DCR Recreational Trails DBE Report; and
11. DCR Bidder’s List

24. SOVEREIGN IMMUNITY AND INDEMNIFICATION

The Grantee covenants to indemnify and hold harmless the State from and against any and all losses suffered by the State and any and all claims, liability or penalties asserted against the State by or on behalf of any person on account of, based in, resulting from arising out of, (or which may be claimed to have arisen out of) the acts or omissions of the Grantee. Nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State. This covenant shall survive the termination of the grant.

By signing below, the **(Grantee)** confirms that they have read through and agree to the terms set forth in the agreement above.

Authorized Signature

Date

Print Name

Organization/Agency

Please sign and make a copy of this Grant Agreement for your records. Please forward the original document as well as all written requests and communications to:

Amanda Lewis
Recreational Trails Program Coordinator
136 Damon Road
Northampton, MA 01060
(413)- 586-8706 ext. 19
Amanda.lewis@state.ma.us

Appendix A

TITLE VI/NONDISCRIMINATION AGREEMENT AND RECIPIENT ASSURANCES

The Commonwealth of **Massachusetts**, acting through its **Department of Conservation and Recreation** (hereinafter referred to as the “Recipient”), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the United States Department of Transportation (USDOT), Federal Highway Administration via funds received from the Commonwealth of Massachusetts Department of Transportation, it is subject to and must comply with the following, as applicable and appropriate:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 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);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 *et seq.*), (prohibits discrimination on the basis of disability);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 49 C.F.R. Part 27 (entitled *Nondiscrimination On The Basis Of Disability In Programs Or Activities Receiving Federal Financial Assistance*);
- 49 C.F.R. Part 28 (entitled *Enforcement Of Nondiscrimination On The Basis Of Handicap In Programs Or Activities Conducted By The Department Of Transportation*);
- 49 C.F.R. Part 37 (entitled *Transportation Services For Individuals With Disabilities (ADA)*);
- 23 C.F.R. Part 200 (FHWA’s Title VI/Nondiscrimination Regulation);
- 28 C.F.R. Part 35 (entitled *Discrimination On The Basis Of Disability In State And Local Government Services*);
- 28 C.F.R. Part 50.3 (DOJ Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory cites are hereinafter referred to as the “Acts.” The preceding regulatory cites are hereinafter referred to as the “Regulations.”

Although not applicable to Recipients directly, there are certain Executive Orders and relevant guidance that direct action by Federal agencies regarding their federally assisted programs and activities to which compliance is required by Recipients to ensure Federal agencies carry out their responsibilities. Executive Order 12898, 3 C.F.R. 859 (1995), entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”, emphasizes that Federal agencies should utilize existing laws to achieve Environmental Justice, in particular Title VI, to ensure nondiscrimination against minority populations. Recipients should be aware that certain Title VI matters raise Environmental Justice concerns and FHWA intends that all Recipients evaluate and revise existing procedures (as appropriate) to address and implement Environmental Justice considerations. See the following FHWA website for more information and facts about Environmental Justice: <http://www.fhwa.dot.gov/environment/ejustice/facts/index.htm>;

Appendix A

Additionally, Executive Order 13166, 3 C.F.R. 289 (2001) on Limited-English-Proficiency, according to the U.S. Department of Justice in its Policy Guidance Document dated August 16, 2000 (65 Fed. Reg. at 50123), clarifies the responsibilities associated with the “*application of Title VI’s prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency.*” When receiving Federal funds Recipients are expected to conduct a four-factor analysis to prevent discrimination based on National Origin. (See also U.S. DOT’s “*Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,*” dated December 14, 2005, (70 Fed. Reg. at 74087 to 74100); the Guidance is a useful resource when performing a Four-Factor Analysis).

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, policy, memoranda, and/or guidance, Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that

“No person in the United States shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from the USDOT, including the Federal Highway Administration.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973) by restoring the broad, institution wide scope, and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is federally-assisted.

Additionally, the Recipient may not discriminate in the selection and retention of contractors, including without limitation, retaining contractors whose services are for, or incidental to, construction, planning, research, highway safety, engineering, property management, realty, fee contracts, and other commitments with persons for services and expenses incidental to the acquisition of rights-of-way.

Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of rights-of-way, and related projects, including those who supply materials and lease equipment.

The Recipient may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where highway rights-of-way acquisitions necessitate relocation(s).

The Recipient may not discriminate by preventing Title VI/Nondiscrimination populations from accessing and utilizing facilities and services provided for public accommodations (i.e., eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over, or under the rights-of-way of federally assisted highways.

The Recipient, its sub-recipients, contractors, subcontractors, and other persons subject to this Agreement may not discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

Appendix A

The Recipient shall develop and implement a Public Participation Plan in a manner that ensures the identification of Title VI/Nondiscrimination population(s), affords the population(s) opportunities to comment, and provides an atmosphere where all comments are promptly addressed with regard to the location and design of highway construction projects. Additionally, the Recipient shall not locate, design, or construct a highway in such a manner as to deny access to, and use thereof, to any persons on the basis of race, color, national origin, sex, age, or disability.

More specifically and without limiting the above general Assurance, the Recipient agrees with and gives, the following Assurance with respect to its federally-assisted highway program, as follows:

1. The Recipient agrees that each “program” and each “facility” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the Acts and the Regulations;
2. The Recipient shall insert the following notification in all solicitations for bids and Requests For Proposals for work or material subject to the Acts and the Regulations made in connection with all **Federal Highway Programs** and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Massachusetts Department of Conservation and Recreation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4), other Nondiscrimination requirements (The Federal-Aid Highway Act of 1973, The Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990), and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement will be awarded without discrimination on the ground of race, color, national origin, sex, age, or disability.”;

3. The Recipient shall insert the clauses of “Appendix A” of this Assurance in every contract or agreement subject to the Acts and the Regulations;
4. The Recipient 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 or recording a transfer of real property, structures or improvements thereon or interest therein to a Recipient;
5. The Recipient shall insert the following language in all Federal-Aid Agreements entered into with the FHWA:

*“The Commonwealth of Massachusetts, acting through its Department of Transportation (Recipient) and Department of Conservation and Recreation (Recipient or Sub-Recipient) **HEREBY AGREES THAT**, as a condition to receiving Federal financial assistance from the United States Department Of Transportation, Federal Highway Administration, it is subject to and shall comply with Title VI of the Civil Rights Act of 1964 and additional Nondiscrimination requirements as detailed in the **FHWA Assurances for Title VI and Other Nondiscrimination Statutes and Regulations** document.”*

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6. That where the Recipient 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 over which DCR has control;
7. That where the Recipient receives Federal financial assistance in the form, 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;
8. That the Recipient shall “include the appropriate clauses set forth in Appendix C and Appendix D” of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable Project or Program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable Project or Program.
9. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, 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 Recipient 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
 - b. The period during which the Recipient retains ownership or possession of the property.
10. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance; and
11. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, 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, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the Department of Transportation under the Federal Highway Program 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 the

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Federal Highway Programs. The person or persons whose signature appears below are authorized to sign this assurance on behalf of the Recipient.

TITLE VI/NONDISCRIMINATION AGREEMENT AND SUB-RECIPIENT ASSURANCES

The _____ [Grantee] (hereinafter referred to as the “Sub-Recipient”), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the United States Department of Transportation (USDOT), Federal Highway Administration, from the Commonwealth of Massachusetts, through its Department of Transportation and Department of Recreation and Conservation (Recipient), it is subject to and must comply with the Statutory/Regulatory Authorities and requirements and any relevant attachments detailed in this document.

THIS 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 Department of Transportation under the Federal Highway Program 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 the **Federal Highway Programs**. The person or persons whose signature appears below are authorized to sign this assurance on behalf of the Sub-Recipient.

(Name of Grantee) _____

(Signature of Grantee) _____

(Title Of Authorized Signatory) _____

DATED _____

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APPENDIX A-1

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 shall comply with the Acts and the Regulations relative to Nondiscrimination 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. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, 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 the Acts and the Regulations, including employment practices when the contract covers a 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 shall be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Acts, the Regulations and 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 Recipient or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Acts, Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Recipient or the FHWA, 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 Recipient shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the contractor under the contract until the contractor complies; and/or
 - Cancellation, termination, or suspension of the contract, in whole or in part.
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 Acts, the Regulations and directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a

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means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a 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 Recipient to enter into such litigation to protect the interests of the Recipient and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Appendix B

RTP Equipment Requirements (CFR 200.319)

(a) *Title.* Subject to the obligations and conditions set forth in this contract, title to equipment acquired under this award will vest upon acquisition in the Grantee's name. Further, the title for equipment to be purchased under this contract is conditional upon the following:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the Massachusetts Department of Conservation and Recreation.

(3) Use and dispose of the property in accordance with paragraphs (c) and (e) of this section

(c) *Use.* (1) Equipment must be used by the Grantee pursuant to the scope and purpose of this project as long as needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the purposes of this project, the equipment may be used in other activities supported by the Massachusetts Department of Conservation and Recreation in the following order of priority:

(i) Activities under a Federal award through the Massachusetts Department of Conservation and Recreation, then

(ii) Activities under Federal awards from other Federal awarding agencies in the Commonwealth of Massachusetts.

(2) During the time that equipment is used on the project or program for which it was acquired, the Grantee must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work pursuant to this award. First preference for other use must be given to other programs or projects supported by the Massachusetts Department of Conservation and Recreation and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies in the Commonwealth of Massachusetts. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) The Grantee must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute during the useful life of the equipment.

(4) When acquiring replacement equipment, the Grantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

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- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for this award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once a year.
 - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
 - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (5) If the Grantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) *Disposition.* When original or replacement equipment acquired under this award is no longer needed for the purposes of this project or for other activities currently or previously supported by a Federal awarding agency or the Commonwealth of Massachusetts, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the Grantee must request disposition instructions from the Massachusetts Department of Conservation and Recreation. Disposition of the equipment will be made as follows:
- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Massachusetts Department of Conservation and Recreation.
 - (2) If the Massachusetts Department of Conservation and Recreation fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the Grantee or sold. The Massachusetts Department of Conservation and Recreation is entitled to an amount calculated by multiplying the current market value or proceeds from sale by its percentage of participation in the cost of the original purchase. If the equipment is sold, the Massachusetts Department of Conservation and Recreation may permit the Grantee to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
 - (3) The Grantee may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the Grantee must be entitled to compensation for its attributable percentage of the current fair market value of the property.