

Memorandum

To: Programs, Projects and Operations Subcommittee

Subject: District Policies – ADA and Title VI Civil Rights
21.1 – ADA Compliance
21.2 – Title VI Civil Rights Compliance

Date: August 26, 2010

From: Gerry Bowen

In order to be eligible to receive and manage federal funds for trail development, FHWA and NDOR require the District to have policies relating to compliance with the Americans with Disabilities and Title VI Civil Rights. Attached are two policies to meet this requirement, plus the necessary Board resolutions adopting each policy.

- **It is recommended that the Subcommittee recommend to the Board that Policies 21.1 – ADA Compliance and 21.2 – Title VI Civil Rights Compliance, in the form as presented to the Subcommittee, be adopted by the Board and placed in the District's Policy Manual.**

RESOLUTION
TITLE VI- CIVIL RIGHTS
Americans with Disabilities/Section 504 of Rehabilitation Act
Papio-Missouri River Natural Resources District

Whereas: Certain transportation facilities (roads, streets, trails, and others) in Papio-Missouri River Natural Resources District have been designated as being eligible for federal funds by the Federal Highway Administration in compliance with federal laws pertaining thereto;

Whereas: Papio-Missouri River Natural Resources District desires to continue to participate in Federal-Aid transportation construction programs;

Whereas: The Nebraska Department of Roads as a recipient of said Federal funds is charged with oversight of the expenditures of said funds;

Whereas: Papio-Missouri River Natural Resources District as a sub-recipient of said Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal and State law, the rules and regulations of the Federal Highway Administration, the requirements of the Local Public Agency (LPA) Guidelines Manual of the Nebraska Department of Roads and the Americans with Disabilities/Section 504 – Civil Rights Policy of Papio-Missouri River Natural Resources District; and

Whereas: Papio-Missouri River Natural Resources District understands that the failure to meet all requirements for federal funding could lead to a project(s) being declared ineligible for federal funds, which could result in Papio-Missouri River Natural Resources District being required to repay some or all of the federal funds expended for a project(s).

Be It Resolved: The Papio-Missouri River Natural Resources District Board of Directors does hereby adopt and bind itself to comply with all applicable federal law, including the rules and regulations of the Federal Highway Administration, all applicable state law and rules and regulations (Nebraska Administrative Code) and the requirements of the LPA Guidelines Manual of the Nebraska Department of Roads and the Americans with Disabilities/Section 504 – Civil Rights of Papio-Missouri River Natural Resources District.

Be It Further Resolved: The Papio-Missouri River Natural Resources District Board of Directors does hereby designate the following as responsible for the management of the Americans with Disabilities/Section 504 – Civil Rights process:

The General Manager of the District

Adopted this _____ day of _____, 2010 at Omaha, Nebraska, by the Board of Directors of the Papio-Missouri River Natural Resources District.

Chairperson

Attest:

Secretary

21.1 – Compliances – Americans with Disabilities Act

POLICY STATEMENT

The Papio-Missouri River Natural Resources District will ensure that no qualified disabled individual shall, solely on the basis of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any of its programs, services, or activities as provided by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA). The Papio-Missouri River Natural Resources District further ensures that every effort will be made to provide nondiscrimination in all of its programs or activities regardless of the funding source.

For our purposes, a disabled person is defined as any person who

- Has a physical or mental impairment that substantially limits one or more major life activities,
- Has a record of such an impairment, or
- Is regarded as having such an impairment

AUTHORITIES

Section 504 of the Rehabilitation Act of 1973, as amended, provides that “No otherwise qualified disabled individual in the United States, as defined in section 7(6), shall, solely by reason of his disability, be excluded for the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 29 USC 794 (October 29, 1992 to the Rehabilitation Act of 1973) substitutes “a disability” for “handicaps” and “disability” for “handicap”.

49 CFR Part 27.13 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, “This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance”.

49 CFR Part 28.102 (Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Transportation) states, “This part applies to all programs or activities conducted by the Department of Transportation except for programs and activities conducted outside the United States that do not involve individuals with disabilities in the United States.”

28 CFR Part 35 (Judicial Administration) states that: “The purpose of this part is to effectuate Subtitle A of Title II of the ADA which prohibits discrimination on the basis of disabilities by public entities.

49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, “The purpose of this part is to carry out the intent of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) as amended,

to the end that no otherwise qualified disabled individual in the United States shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

49 CFR Part 28-140 (Employment) states that, “(a) No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Department,” and “(b) The definitions, requirements, and procedures of Section 504 of the Rehabilitation Act of 1973 (29 USC 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

29 CFR Part 1613 (Equal Employment Opportunity in the Federal Government) states that: “It is the policy of the Government of the United States . . . to provide equal opportunity in employment for all persons to prohibit discrimination in employment because of race, color, religion, sex, or national origin and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.”

42 USC Part 12101-12213 (The Americans with Disabilities Act of 1990) states that: “No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”

Section 504/ADA Self Evaluation

A self-evaluation of District policies, practices, and facilities has been conducted and they have been found to comply with appropriate federal and state laws.

Section 504/ADA Transition Plan

District facilities meet the ADA and Section 504 requirements. As projects are built, or buildings remodeled, pedestrian access will be constructed or modified to meet ADA and Section 504 requirements.

Complaint Procedures

Title VI discrimination complaints are to be made in writing to the District’s General Manager. Every effort will be made to resolve complaints at the Papio-Missouri River Natural Resources District.

- The complaint must be made within 60 days of the alleged discrimination.
- The complaint must list the complainant’s name, address and telephone number.
- In the case of joint projects, the complaint must list the name and address of the entity, contractor, or sub-recipient alleged to have discriminated if it is different than the District.

- If known, the complaint should list the individual by name or position alleged to have caused discrimination.
- The complaint must contain the basis of the complaint, pertinent details, witnesses, and the remedy requested. The complaint must contain a description of how, why, when, and where the alleged discriminatory act took place, including as much background information as possible.

Upon receipt of a complaint:

- The General Manager shall have an investigation done and a written report submitted to his/her office.
- If the General Manager finds the complaint is valid, he/she shall see that the situation is corrected or make recommendations to the Board of Directors for modification of the facility, project, or program in question. The complainant shall be notified of the action taken.
- If the General Manager finds that the complaint is not valid, the complainant shall be notified.
- The complainant may accept the General Manager's findings or request a hearing before the Board of Directors to consider the matter.
- After a published notice of the hearing in accordance with Nebraska's Open Meeting Law, the Board shall hear the matter of alleged discrimination and make a decision after considering the facts of the case.
- If the Board of Directors finds the complaint is valid, the Board of Directors shall require the correction of the situation or modification of the facility, project, or program in question.
- If the Board of Directors dismisses the complaint, or in the complainant's view does not take the appropriate action, the complainant may proceed to file a complaint with the appropriate agency.

Reasonable Accommodation Procedures:

If an individual who is planning on visiting the District office, attending a meeting or hearing, has a hearing or speech impairment, or if auxiliary aids or reasonable accommodations are needed for that individual, he/she needs to call the District office at 402-444-6222 for arrangements. Advance notice of 10 days is needed when requesting special accommodations.

Assurances

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the Papio-Missouri River Natural Resources District desiring to avail itself of federal financial assistance from the US Department of Transportation, hereby gives assurance that no qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives or benefits from this federal financial assistance.

The Papio-Missouri River Natural Resources District further assures that its programs will be conducted, and its facilities operated, in compliance with all requirements imposed by or pursuant to 49 CFR Part 27, 28 CFR Part 35 and 42 USC 12101-12213.

Adopted this _____ day of _____, 2010 at Omaha, Nebraska by the Board of Directors of the Papio-Missouri River Natural Resources District.

Chairperson

Attest:

Secretary

NDOR USE ONLY

Date Received: _____

Questionnaire Review:

NDOR Employee: _____

Title: _____

Date: _____

Next Step:

Letter of compliance: _____

Further review required: _____

RESOLUTION
TITLE VI – CIVIL RIGHTS
Papio-Missouri River Natural Resources District

Whereas: Certain transportation facilities (roads, streets, trails, and others) in the Papio-Missouri River Natural Resources District have been designated as being eligible for federal funds by the Federal Highway Administration in compliance with federal laws pertaining thereto;

Whereas: The Papio-Missouri River Natural Resources District desires to continue to participate in Federal-Aid transportation construction programs;

Whereas: The Nebraska Department of Roads as a recipient of said Federal funds is charged with oversight of the expenditures of said funds;

Whereas: The Papio-Missouri River Natural Resources District as a sub-recipient of said Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal and State law, the rules and regulations of the Federal Highway Administration, the requirements of the Local Public Agency (LPA) Guidelines Manual of the Nebraska Department of Roads and the Title VI – Civil Rights Policy of Papio-Missouri River Natural Resources District; and

Whereas: Papio-Missouri River Natural Resources District understands that the failure to meet all requirements for federal funding could lead to a project(s) being declared ineligible for federal funds, which could result in Papio-Missouri River Natural Resources District being required to repay some or all of the federal funds expended for a project(s).

Be It Resolved: The Board of Directors of the Papio-Missouri River Natural Resources District does hereby adopt and bind itself to comply with all applicable federal law, including the rules and regulations of the Federal Highway Administration, all applicable state law and rules and regulations (Nebraska Administrative Code) and the requirements of the LPA Guidelines Manual of the Nebraska Department of Roads and the Title VI – Civil Rights of Papio-Missouri River Natural Resources District.

Be It Further Resolved: The Board of Directors of the Papio-Missouri River Natural Resources District does hereby designate the following as responsible for the management of the Title VI – Civil Rights process:

The General Manager of the District.

Adopted this _____ day of _____, 2010 at Omaha, Nebraska by the Board of Directors of the Papio-Missouri River Natural Resources District.

Chairperson

Attest: _____
Secretary

21.2 – Compliances – Title VI Civil Rights

TITLE VI NONDISCRIMINATION AGREEMENT
The Nebraska Department of Roads
and
The Papio-Missouri River Natural Resources District

Policy Statement

The Papio-Missouri River Natural Resources District, hereinafter referred to as the “District,” assures that no person shall on the grounds of race, color, national origin, age, disability/handicap or sex, as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. The District further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

The Civil Rights Restoration Act of 1987, broadened the scope of Title VI coverage by expanding the definition of terms “programs or activities” to include all programs or activities of Federal Aid recipients, sub-recipients, and contractors/consultants, whether such programs and activities are federally assisted or not (Public Law 100259 [S.557] March 22, 1988.)

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the District hereby gives assurance that no qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives or benefits from this Federal financial assistance.

In the event the District distributes federal aid funds to a sub-recipient, the District will include Title VI language in all written agreements and will monitor for compliance.

The District’s General Manager, is responsible for initiating and monitoring Title VI activities, preparing reports and other responsibilities as required by 23 Code of Federal Regulation(CFR) 200 and 49 Code of Federal Regulation 21.

The responsible District official is:

John Winkler
General Manager
September 9, 2010

Standard DOT Assurances

49 CFR Part 21.7

The District hereby gives assurances:

1. That no person shall on the grounds of race, color, national origin, age, disability/handicap and sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the District regardless of whether those programs and activities are Federally funded or not. Activities and programs which the District hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to:
 - a. That the District agrees that each "program" and each "facility as defined in subsections 21.23(e) and 21.23(b) of the Regulations, 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 Regulations.
 - b. That the District shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all Transportation Enhancement Program and, in adapted form in all proposals for negotiated agreements:
2. The District, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority 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, or national origin, sex, age and disability/handicap in consideration for an award.
3. That the District shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the District 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. That where the District 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. That where the District 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.

7. That the District shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the District with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the Transportation Enhancement Program; and
 - b. for the construction or use of or access to space on, over or under real property acquired, or improved under the Transportation Enhancement Program.

8. That this assurance obligates the District 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 District 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 District retains ownership or possession of the property.

9. The District shall provide for such methods of administration for the program 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, subgrantees, 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 Act, the Regulations and this assurance.

10. The District agrees that 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 District and the Department of Transportation under the Transportation Enhancement Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the Transportation Enhancement Program. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the District.

Implementation Procedures

This agreement shall serve as the District's Title VI plan pursuant to 23 CFR 200 and 49 CFR 21.

For the purpose of this agreement, "Federal Assistance" shall include:

1. grants and loans of Federal funds,
2. the grant or donation of Federal property and interest in property,
3. the detail of Federal personnel,
4. the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the LPA, or in recognition of the public interest to be served by such sale or lease to the LPA, and
5. any Federal agreement, arrangement, or other contract which has as one of its purposes, the provision of assistance.

The District shall:

1. Issue a policy statement, signed by the District's General Manager, which expresses the District's commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the District's organization and to the general public. Such information shall be published where appropriate in languages other than English.
2. Take affirmative action to correct any deficiencies found by NDOR or the United States Department of Transportation (USDOT) within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The District's General Manager shall be held responsible for implementing Title VI requirements.
3. Designate a coordinator who has a responsible position in the organization and easy access to the head of the District's General Manager. The coordinator shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
4. Develop and implement a community outreach and public education program.
5. Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigation. Identify each complainant by race, color, national origin or sex, the nature of the complaint, the date the complaint was filed, the date the investigation was completed, the disposition, the date of the disposition, and other pertinent information. A copy of the complaint, together with a copy of the District's report of investigation, will be forwarded to NDOR's Highway Civil Rights Coordinator within 10 days of the date the complaint was received by the District.
6. Collect statistical data (race, color, national origin, sex) of participants in, and beneficiaries of the programs and activities conducted by the District.

7. Conduct Title VI reviews of the District and sub-recipient contractor/consultant program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.
8. Conduct training programs on Title VI and related statutes.
9. Prepare a yearly report of Title VI accomplishments for the last year and goals for the next year.
 - a. Annual Work Plan Outline Title VI monitoring and review activities planned for the coming year; state by which each activity will be accomplished and target date for completion.
 - b. Accomplishment Report List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Coordinator and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews (internal or external) conducted by the Title VI Coordinator. List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the District. Include a listing of complaints received against sub-recipients, as well as a summary of complaint and actions taken.

Discrimination Complaint Procedures – Allegations of Discrimination in Federally Assisted Programs or Activities

1. Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, the American with Disabilities Act of 1990, Section 504 of the Vocational Rehabilitation Act of 1973 and the Civil Rights Restoration Act of 1987, as amended, may file a complaint with the District. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the District's Title VI Coordinator for review and action.
2. In order to have the complaint consideration under this procedure, the complainant must file the complaint no later than 180 days after:
 - a. The date of alleged act of discrimination; or
 - b. Where there has been a continuing course of conduct, the date on which that conduct was discontinued.
 - c. In either case, the District or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.
3. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the District, the person shall be interviewed by the Title VI Coordinator. If necessary, the Title VI Coordinator will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled according to the District's investigative procedures.
4. Within 10 days, the Title VI Coordinator will acknowledge receipt of the allegation, inform the complainant of procedures to be followed, and advise the complainant of other avenues of redress available, such as NDOR and USDOT.
5. The District will advise NDOR within 10 days of receipt of the allegations. Generally, the following information will be included in every notification to NDOR:
 - a. Name, address, and phone number of the complainant.
 - b. Name(s) and address(es) of alleged discriminating official(s).
 - c. Basis of complaint (i.e., race, color, national origin or sex)
 - d. Date of alleged discriminatory act(s).
 - e. Date of complaint received by the District.
 - f. A statement of the complaint.
 - g. Other agencies (state, local or Federal) where the complaint has been filed.
 - h. An explanation of the actions the District has taken or proposed to resolve the issue raised in the complaint.

6. NDOR will forward the complaint to FHWA. FHWA Office of Civil Rights will determine the appropriate individual and/or organization to conduct the investigation.
7. Within 60 days, the Title VI Coordinator will conduct an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the head of the District. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.
8. Within 90 days of receipt of the complaint, the District's General Manager will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with NDOR, or USDOT, if they are dissatisfied with the final decision rendered by the District. The Title VI Coordinator will also provide NDOR with a copy of this decision and summary of findings upon completion of the investigation.
9. Any complaints received against the District should immediately be forwarded to NDOR for investigation. The District will not investigate any complaint in which it has been named in the complaint.
10. Contacts for the different Title VI administrative jurisdictions are as follows:

Nebraska Department of Roads
Human Resources, Title VI Program
1500 Highway 2, P.O. Box 94759
Lincoln, NE 68509-4759
(402) 479-4870

Federal Highway Administration
Nebraska Division Office
100 Centennial Mall North
Lincoln, NE 68508
(402)437-5765

Sanctions

In the event the District fails or refuses to comply with the terms of this agreement, the NDOR may take any or all of the following actions:

- a. Cancel, terminate, or suspend this agreement in whole or in part;
- b. Refrain from extending any further assistance to the District under the program from which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the District.
- c. Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the District.
- d. Refer the case to the Department of Justice for appropriate legal proceedings.

NEBRASKA DEPARTMENT OF ROADS:

Signature

Title: Civil Rights Coordinator

Date: _____

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

Signature

Title: _____

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 shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), 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, or national origin, sex, age, and disability/handicap 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 49 CFR, 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, or national origin, sex, age, and disability/handicap.
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 (*Recipient*) or the FHWA to be pertinent to ascertain compliance with such 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:
 - 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.

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 (*Recipient*) or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: 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

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 Department of Transportation, as authorized by law, and upon the condition that the *(Name of Recipient)* will accept title to the lands and maintain the project constructed thereon, in accordance with *(Name of Appropriate Legislative Authority)*, the Regulations for the Administration of Transportation Enhancement Program and the policies and procedures prescribed by FHWA, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. .2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the *(Name of Recipient)* all the right, title and interest of the 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 *(Name of Recipient)* 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 for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the *(Name of Recipient)*, its successors and assigns.

The *(Name of Recipient)*, in consideration or 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, or national origin, sex, age, and disability/handicap, 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, and
2. that the *(Name of Recipient)* shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – implementation and Review Procedures, and as said Regulations may be amended, and

3. that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department 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 Department of Transportation and its assigns as such interest existed prior to this instruction.

APPENDIX C

1. The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the *(Name of Recipient)* pursuant to the provisions of Assurance 6(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 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 Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended.

Include in licenses, leases, permits, etc.

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* 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 [licenses, lease, permit, etc.] had never been made or issued.

Include in deed.

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

2. The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by *(Name of Recipient)* pursuant to the provisions of Assurance 6(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:

- a. no person on the ground of race, color, or national origin, sex, age, and disability/handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,
- b. that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of, race, color, or national

- origin, sex, age, and disability/handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination,
- c. that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations. Department of Transportation, Subtitle A, Office of the Secretary. Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964), Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended.

Include in licenses, leases, permits, etc.

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) 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.

Include in deeds

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