

NONDISCRIMINATION AGREEMENT

THE FEDERAL HIGHWAY ADMINISTRATION - TEXAS DIVISION AND THE TEXAS DEPARTMENT OF TRANSPORTATION

The Texas Department of Transportation, (hereinafter referred to as the "Recipient") hereby agrees to comply with the following Federal statutes, U.S. Department of Transportation and Federal Highway Administration Regulations, and the policies and procedures promulgated by the Federal Highway Administration, as a condition to receipt of Federal funds.

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964, as amended, provides that no person shall on the grounds of race, color, national origin, sex, age, and disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Civil Rights Restoration Act of 1987 amended Title VI to specify that entire institutions receiving Federal funds – whether schools and colleges, government entities, or private employers – must comply with Federal civil rights laws, rather than just the particular programs or activities that receive the funds.

Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. If a unit of a State or local government is extended Federal-aid and distributes such aid to another governmental entity, all of the operations of the Recipient and subrecipient are covered. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such entity received Federal financial assistance (FHWA Notice N 4720.6, September 2, 1992).

Assurances 49 CFR Part 21.7

The Texas Department of Transportation, HEREBY GIVES ASSURANCES:

1. That no person 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 conducted by the Recipient regardless of whether those programs and activities are Federally-funded or not. Activities and programs which the Recipient hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to all programs and activities of the Recipient and its subrecipients.
2. That it will promptly take any measures necessary to effectuate this agreement.

3. That it will adopt and adhere to the USDOT Standard Title VI/Nondiscrimination Assurances DOT Order No. 1050.2A.
4. That it agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
5. That it will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all Department of Transportation programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Texas Department of Transportation, 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) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

6. That it will insert the clauses of Appendix A and E of the Standard DOT Title VI/Nondiscrimination Assurances in every contract or agreement subject to the Acts and the Regulations.
7. That it will insert the clauses of Appendix B of the Standard DOT Title VI/Nondiscrimination Assurances, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
8. That where it receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
9. That where it receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
10. That it will include the clauses set forth in Appendix C and Appendix D of the Standard DOT Title VI/Nondiscrimination Assurances, 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 activity, 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 activity, project, or program.

11. That this assurance obligates it 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.
12. That it will 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, subrecipients, subgrantees, contractors, subcontractors, consultants, 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.
13. That it 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.
14. That it agrees to comply (and require any subrecipients, subgrantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the USDOT access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the USDOT. You must keep records, reports, and submit the material for review upon request to USDOT, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
15. That it gives this assurance in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under all Department of Transportation programs. This assurance is binding on Texas, other recipients, subrecipients, subgrantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in all Department of Transportation programs. The person(s) signing is authorized to sign on behalf of the Recipient.

Implementation Procedures
23 CFR Part 200

This agreement shall serve as the Recipient's Title VI plan pursuant to 23 CFR Part 200 and the Title VI Implementation Guide.

1. For the purpose of this agreement, "Federal Assistance" shall include:
2. Grants and loans of Federal funds;
3. The grant or donation of Federal property and interest in property;
4. The detail of Federal personnel;
5. 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 Recipient, or in recognition of the public interest to be served by such sale or lease to the Recipient; and
6. Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

The Recipient shall:

1. Issue a policy statement, signed by the head of the Recipient, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the Recipient'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 the Federal Highway Administration within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the Recipient shall be held responsible for implementing Title VI requirements;
3. Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the Recipient. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports;
4. Adequately staff the civil rights unit to effectively implement the civil rights requirements;
5. Process complaints of discrimination consistent with the provisions contained in this agreement. Civil rights personnel trained in discrimination complaint investigations shall conduct investigations. Identify each complainant by race, color, national origin, sex, age, disability; 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 Recipient's report of investigation, will be forwarded to the Federal Highway Administration within 60 days of the date the complaint was received by the Recipient;

6. Collect statistical data (race, color, national origin, sex, age, and disability) of participation in, and beneficiaries of the programs and activities conducted by the Recipient;
7. Conduct Title VI reviews of the Recipient and subrecipient contractor 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; and
9. Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

(a) **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 Specialist and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist. List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the Recipient.

(b) **Annual Work Plan:**

Outline Title VI monitoring and review activities planned for the coming year; state by whom each activity will be accomplished and target date for completion.

Discrimination Complaint Procedure

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, as amended, may file a complaint with the Recipient. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the Recipient's Title VI Specialist for review and action.
2. In order to have the complaint considered under this procedure, the complainant must file the complaint no later than 180 days after:
 - (a) The date of the alleged act of discrimination; or
 - (b) Where there has been a continuing course of conduct, the date on which that conduct was discovered.

In either case, the Recipient or its 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 Recipient, the person shall be interviewed by the Title VI Specialist. If necessary, the Title VI Specialist 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 in the usual manner.
4. Within 10 days of receipt of the complaint, the Title VI Specialist will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as the Federal Highway Administration and the Department of Transportation.
5. Generally, the following information will be included in every notification to the Federal Highway Administration:
 - (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, sex, age, disability);
 - (d) Date of alleged discriminatory act(s);
 - (e) Date of complaint received by the Recipient;
 - (f) A statement of the complaint;
 - (g) Other agencies (state, local or Federal) where the complaint has been filed; and
 - (h) An explanation of the actions the Recipient has taken or proposed to resolve the issue raised in the complaint.
6. Within 60 days of receipt of the complaint, the Title VI Specialist will conduct and complete 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 Recipient. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.
7. Within 90 days of receipt of the complaint, the head of the Recipient or his designee 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 the Department of Transportation, or the Federal Highway Administration, if they are dissatisfied with the final decision rendered by the State. The Recipient's Title VI Specialist will also provide the Federal Highway Administration a copy of this decision and the summary of findings.

Sanctions

In the event the Recipient fails or refuses to comply with the terms of this agreement, the Federal Highway Administration may take any or all of the following sanctions:

1. Cancel, terminate, or suspend this agreement in whole or in part.
2. Refrain from extending any further assistance to the Recipient under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Recipient.
3. Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the Recipient.
4. Refer the case to the Department of Justice for appropriate legal proceedings.

SIGNED FOR THE FEDERAL HIGHWAY ADMINISTRATION:



Al Alonzi
Division Administrator



Date

SIGNED FOR THE TEXAS DEPARTMENT OF TRANSPORTATION:



James M. Bass
Executive Director



Date