

## Arkansas Department of Transportation

### Federal Motor Carrier Safety Administration Title VI/Non-Discrimination Assurances

#### DOT Order No. 1050.2A

The Arkansas Department of Transportation (herein referred to as the Recipient), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the United States Department of Transportation (DOT), through the **Federal Motor Carrier Safety Administration (FMCSA)**, it is subject to and will comply with the following:

#### Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 Stat. 252), (prohibits discrimination on the basis of race, color, national origin)
- Federal-Aid Highway Act of 1973 (23 USC § 324 *et seq.*), (prohibits discrimination on the basis of sex)
- Title IX of the Education Amendments Act of 1972, as amended (20 USC § 1681 *et seq.*), (prohibits discrimination on the basis of sex in education programs or activities)
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability)
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age)
- Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*), (prohibits discrimination on the basis of disability)
- 49 CFR part 21 (entitled *Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*)
- 49 CFR part 27 (entitled *Non-discrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance*)
- 49 CFR part 28 (entitled *Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation*)
- 49 CFR part 37 (entitled *Transportation Services for Individuals with Disabilities*)
- 49 CFR part 303 (FMCSA's Title VI/Non-discrimination Regulation)
- 28 CFR part 35 (entitled *Discrimination on the Basis of Disability in State and Local Government Services*)
- 28 CFR section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964)

The preceding statutory and regulatory citations hereinafter are referred to as the Acts and Regulations, respectively.

Although not applicable to Recipients directly, there are certain Executive Orders and relevant guidance that direct action by Federal agencies regarding federally assisted programs and activities to which compliance is required by Recipients to ensure Federal agencies carry out their responsibilities. Executive Order 12898 (1995), entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" emphasizes that Federal agencies should use existing laws to achieve Environmental Justice, in particular Title VI, to ensure non-discrimination against minority populations. Recipients should be aware

that certain Title VI matters raise Environmental Justice concerns and FMCSA intends that all recipients evaluate and revise existing procedures (as appropriate) to address and implement Environmental Justice considerations. The following Federal Highway Administration website provides more information and facts about Environmental Justice: [http://www.fhwa.dot.gov/environment/environmental\\_justice/index.cfm](http://www.fhwa.dot.gov/environment/environmental_justice/index.cfm).

Additionally, Executive Order 13166 (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. DOT's "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons," dated December 14, 2005 (70 Fed. Reg. at 74087 to 74100) is a useful resource when performing a Four-Factor Analysis.

### **General Assurances**

In accordance with the Acts, Regulations, and other pertinent directives, circulars, policies, memoranda, and/or guidance, the 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, disability, low-income, or LEP 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 DOT, including the FMCSA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress with respect to Title VI and other non-discrimination 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 non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally-assisted.

### **Specific Assurances**

More specifically, and without limiting the above general Assurances, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted **FMCSA Program**:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in 49 CFR §§ 21.23 (b) and 21.23 (e) 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 Regulations;
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or materials subject to the Acts and Regulations made in connection with the FMCSA Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*The Arkansas Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 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, all contractors will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of the owner's race, color, national origin, sex, age, disability, income level, or LEP in consideration for an award.*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and Regulations;
4. The Recipient will 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, use, or improvements thereon or interest therein to a Recipient;
5. That where the Recipient 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;
6. 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 will extend to rights to space on, over, or under such property;
7. That the Recipient will include the 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 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.
8. 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.
9. The Recipient 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, sub-recipients, sub-grantees, 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, Regulations, and this Assurance.



## APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and Regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income level, or Limited English Proficiency (LEP) in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurement 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 procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to non-discrimination on the grounds of race, color, national origin, sex, age, disability, income level, or LEP.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FMCSA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FMCSA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of a contractor's non-compliance with the non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FMCSA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FMCSA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided that, if the contractor becomes involved in or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

### APPENDIX B

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW, THEREFORE**, the Department of Transportation as authorized by law and upon the condition that the Arkansas Department of Transportation (ARDOT) will accept title to the lands and maintain the project constructed thereon in accordance with Title 23, United States Code, the Regulations for the Administration of the **Federal Motor Carrier Safety Administration (FMCSA) Program**, and the policies and procedures prescribed by the **FMCSA** of the Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, *Non-discrimination in Federally-assisted Programs of the Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964* (78 Stat. 252; 42 USC § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto ARDOT 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 ARDOT 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 will be binding on ARDOT, its successors and assigns.

ARDOT, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, national origin, sex, age, disability, income level, or Limited English Proficiency 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 ARDOT will 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, *Non-discrimination in Federally-assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964*, and as said Regulations and Acts may be amended, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will 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.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI.)

**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED  
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

**APPENDIX C**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Arkansas Department of Transportation (ARDOT) pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for itself, its 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:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, national origin, sex, age, disability, income level, or Limited English Proficiency will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above non-discrimination covenants, ARDOT will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above non-discrimination covenants, ARDOT will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the ARDOT and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to effectuate the purpose of Title VI.)

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY  
ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

**APPENDIX D**

The following clauses will be included in deeds, licenses, permits, or similar instruments/ agreements entered into by the Arkansas Department of Transportation (ARDOT) pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for itself, its 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 (1) no person on the ground of race, color, national origin, sex, age, disability, income level, or Limited English Proficiency (LEP) will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) 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, national origin, sex, age, disability, income level, or LEP will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above non-discrimination covenants, ARDOT will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above non-discrimination covenants, ARDOT will thereupon revert to and vest in and become the absolute property of ARDOT and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to effectuate the purpose of Title VI.)



## APPENDIX E

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

- Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC § 2000d *et seq.*), which prohibits discrimination on the basis of race, color, national origin, as implemented by 49 CFR § 21.1 *et seq.* and 49 CFR part 303
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601), which prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects
- Federal-Aid Highway Act of 1973 (23 USC § 324 *et seq.*), which prohibits discrimination on the basis of sex
- Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794 *et seq.*), which prohibits discrimination on the basis of disability, and 49 CFR part 27
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*), which prohibits discrimination on the basis of age
- Airport and Airway Improvement Act of 1982 (Pub. L. 97-248 (1982)), as amended, which prohibits discrimination based on race, creed, color, national origin, or sex
- The Civil Rights Restoration Act of 1987 (102 Stat. 28), which restored the broad scope of coverage and clarified the application of Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 -- 12189), as implemented by Department of Justice regulations at 28 CFR parts 35 and 36, and Department of Transportation regulations at 49 CFR parts 37 and 38
- The Federal Aviation Administration's non-discrimination statute (49 USC § 47123), which prohibits discrimination on the basis of race, color, national origin, and sex
- Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, reasonable steps must be taken to ensure that LEP persons have meaningful access to programs (70 Fed. Reg. at 74087 to 74100)
- Title IX of the Education Amendments Act of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*)