



1200 New Jersey Avenue SE
Washington DC 20590

U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

PIPELINE SAFETY

2019 Gas Pipeline Safety Program

60105 - Certification Submission,
Base Grant Application

for

NORTH DAKOTA PUBLIC SERVICE COMMISSION

Please follow the directions listed below:

1. Review the entire document for completeness.
2. Review and have an authorized signatory sign the following pages:
 1. Intentions page, Page 2
 2. For 60105 applications, Certification page, Page 4
 3. For 60106 applications, Agreement page, Page 5
3. Scan the signed document to your computer and email it to Carrie.Winslow@dot.gov.

Submission Information

Submission Date: 9/10/2018 4:57:01 PM

1 GS-18-335 Filed 09/10/2018 Pages: 18
2019 Federal - State gas pipeline safety grant application
Public Service Commission



Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington DC 20590

DEPARTMENT OF TRANSPORTATION

APPLICATION

2019 GRANT PROGRAM IN SUPPORT OF GAS PIPELINE SAFETY

The NORTH DAKOTA PUBLIC SERVICE COMMISSION hereby applies to the Department of Transportation for Federal funds appropriated for the support of Pipeline Safety Programs established under 49 U.S.C. Section 60101 et seq. The actual amount of Federal reimbursement depends upon the availability of appropriated funds and state program performance. The total program funding for the State Program Gas and Hazardous Liquid Base Grants is subject to availability of funds and the enactment of an appropriations bill, and will be distributed according to PHMSA's State Base Grant Allocation formula and policies.

The State Agency:

Intends to submit an annual certification for calendar year 2019 to the Secretary of Transportation under 49 U.S.C. Section 60105.

The state agency plans to carry out the Pipeline Safety Program, during calendar year 2019, as described in Attachment 1, "Description of State Pipeline Safety Program". To accomplish the program, the state agency proposes to expend funds, if applicable, as set forth in Attachment 2, "Pipeline Safety Program Estimated Budget". The state authority claims jurisdictional status on operators within the state outlined in Attachment 3.

Patrick John

Signature

DIRECTOR, PUBLIC UTILITIES DIVISION

Title

September 10, 2018

Date



Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington DC 20590

GAS PIPELINE SAFETY PROGRAM

CERTIFICATION FOR CALENDAR YEAR 2019

This certificate (including attachments) is submitted by the NORTH DAKOTA PUBLIC SERVICE COMMISSION (the state agency) to the secretary of Transportation (the Secretary) under Section 60105 of Title 49, United States Code.)

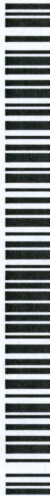
Pursuant to Section 60105(a) of this Title, the state agency hereby certifies to the Secretary that:

1. Under the Constitution and laws of North Dakota it has regulatory jurisdiction over the safety standards and practices of all intrastate pipeline transportation within North Dakota, as outlined on Attachment 3.
2. It has adopted, as of the date of this certification, each federal safety standard established under this Title that is applicable to the intrastate pipeline transportation under its jurisdiction as set forth in paragraph 1, or, with respect to each such federal safety standard established within 120 days before the date of the certification, is taking steps pursuant to state law to adopt such standard. (The adoption by a state agency of a safety standard that is additional to or more stringent than the applicable federal standard is compatible with the federal standards [see Section 60102(a)(1) of this Title] does not prohibit that state agency from certifying to the actions described in this paragraph.)
3. It is enforcing each adopted standard through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section 60107(d)(1)(C) of this title.
4. It is encouraging and promoting the establishment of a program designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies that subjects persons who violate the applicable requirements of that program to civil penalties and other enforcement actions that are substantially the same as are provided under this chapter, and addresses the elements in section 60134(b);
5. It has authority to require each person who engages in the transportation of or who owns or operates pipeline facilities subject to its jurisdiction as set forth in paragraph 1, to establish and maintain records, to make reports, and to provide information, and that this authority is substantially the same as the authority provided under Section 60117 of this Title.
6. It has authority to require each person who engages in the transportation of or who owns or operates intrastate pipeline transportation facilities, subject to its jurisdiction as set forth in paragraph 1, to file with it for approval a plan for inspection and maintenance substantially as described under Section 60108(a) and (b) of this Title.
7. The laws of North Dakota provide for the enforcement of the safety standards referred to in paragraph 2 by injunctive relief and civil penalties substantially the same as those provided under Sections 60120 and 60122(a)(1) and (b)-(f) of this Title.
8. NORTH DAKOTA PUBLIC SERVICE COMMISSION will submit an annual progress report as provided under 60105 (c) (1).

The state agency furthermore agrees to cooperate fully in a system of federal monitoring of the state program to assure the program is being carried out in compliance with this certification. The terms intrastate pipeline transportation, pipeline facilities, transportation of , and state, are used in certification as defined in this Title. This certification is subject to termination by the Secretary in accordance with Section 60105(f) of this Title, on reasonable notice and after opportunity for hearing, may reject the certification or take such other action as deemed appropriate to achieve adequate enforcement including assertion of federal jurisdiction.

In witness whereof, the hand and seal of the NORTH DAKOTA PUBLIC SERVICE COMMISSION is hereby affixed on the date below.

NORTH DAKOTA PUBLIC SERVICE COMMISSION



Patrick Zahn

Signature

DIRECTOR, PUBLIC UTILITIES DIVISION

Title

September 10, 2018

Date

Description of State Pipeline Safety Program

Please provide a detailed description of the state's planned pipeline program for 2019

North Dakota Program Description and Planned Activities

Under North Dakota Century Code Section 49-02-01.2, the North Dakota Public Service Commission (Commission) has authority to establish and enforce minimum safety standards for the design, construction, and operation of facilities used for intrastate distribution, transmission, and gathering of gas ([http:// www.legis.nd.gov/cencode/t49c02.pdf](http://www.legis.nd.gov/cencode/t49c02.pdf)). With this authority, the Commission adopts rules under North Dakota Administrative Code Chapter 69-09-03 related specifically to gas pipeline safety including adoption by reference Part 190, Part 191, Part 192, Part 193 and Part 199 of Title 49 of the Code of Federal Regulations (<http://www.legis.nd.gov/information/acdata/pdf/69-09-03.pdf>). The Commission, by means of a rulemaking, adopts all latest amendments to Part 190, Part 191, Part 192, Part 193 and Part 199 of Title 49. The Commission is also the enforcement agency for North Dakota's One-Call Excavation Notice System under North Dakota Century Code Chapter 49-23 (<http://www.legis.nd.gov/cencode/t49c23.pdf>).

For 2019, the Commission continues to partner with the US Department of Transportation, Pipeline and Hazardous Materials Administration (PHMSA) to assure safety in design, construction, inspection, testing, operation, and maintenance of intrastate gas pipeline facilities in North Dakota.

Program Description

In 2019, the North Dakota Public Service Commission's Gas Pipeline Safety staff is expected to conduct a minimum of 136 inspection days on the Intrastate Operators. There are seventeen intrastate operators, twenty-one inspection units. Unit types include three private distribution units, one LNG unit, nine intrastate transmission units, and eight intrastate gathering units. In North Dakota there are 169171 total services, 3706.1 total miles of distribution mains, 255.5 total miles of transmission lines, 7.39 total miles of Type A gathering lines and 7.07 total miles of Type B gathering lines.

Inspections and Program Activity

The following briefly outlines the different types of gas pipeline safety inspections, how often they will be conducted, and on what type of operator:

Each jurisdictional gas system operator will receive a minimum of one records inspection biannually or more frequently based on performance-based criteria.

Each gas distribution system operator will receive a minimum of one construction inspection per year. This will include one for each operator, and one for their contractors. Operators are asked to supply the Program Manager information that addresses any major construction projects for the upcoming calendar year prior to commencement of those projects.

Each gas operator/inspection unit may receive one or more of the following inspections, as often as necessary: leak surveying, corrosion control, overpressure protection/MAOP, district regulator stations, master meter jurisdiction investigation, propane jurisdiction investigation, farm tap inspection, or meter set inspection. Necessity for any of these inspections may be determined from results or concerns found during records inspections of each operator.

Each jurisdictional gas operator (other than propane or master meter operators) will receive an inspection of its written Drug and Alcohol Use Prevention Plan at intervals not to exceed 5 years. A review of an operator's knowledge of its Plan will be done annually during the annual records inspection.

Each gas operator, after having received an inspection of its Operations and Maintenance (O&M) Plan, may then receive inspections in specific sections of its O&M Plan.

Emergency Response, Operator Qualification, Integrity Management, Public Awareness, and Damage Prevention plans will receive inspections at intervals not to exceed 5 years. Any significant changes made to those plans will be reviewed on an ongoing basis.

For CY 2019, the Program Manager plans to schedule and conduct Operation & Maintenance Plan audits with operators, which will enable the PSC Gas Safety program to assure the operators' programs are audited as required, at intervals not to exceed 5 years.

The Program Manager will be developing, a risk-based analysis and assessment of risks relevant to operators and their specific units, to determine inspection priorities.

Follow-up inspections may be conducted on all operator inspection units on a case by case basis, and as often as necessary to determine compliance.

The Program Manager will address any outstanding compliance actions carried over from CY2018.

The Commission will make its inspector(s) available to OPS Central Region on a per project basis as requested by OPS for the purpose of conducting design, testing and construction inspection on any new interstate gas lines; or for other work on these systems.

Operator Training:

On-site operator training may be scheduled as requested by each individual operator, or as deemed necessary by the Program Manager.

Incident Investigation:

Incidents, as defined in 49 CFR Part 191.3, will be thoroughly investigated within the earliest possible response time, and investigation information will be shared with the PHMSA Central Region Office. In addition, Commission gas pipeline safety inspector(s) will be available to assist in incident investigations at the request of PHMSA/NTSB investigators not only on intrastate gas distribution, transmission, and gathering systems, but any other pipeline system jurisdictional to PHMSA.

Record Keeping:

The Program Manager will ensure the following computerized gas safety records are maintained:

- a) Year-to-date reports of the gas safety program, which includes the operator name and address, type of inspection, date(s) of inspection, number of inspection units and person days spent conducting the inspection, number and date of probable violations and proposed compliance orders issued, number and amount of civil penalties proposed, number of violations found by the Commission, number and amount of civil penalties assessed and collected by the Commission, date(s) civil penalties were issued and collected, date(s) of various orders issued in the case, any pertinent comments about the case, and the total number of Warning Letters issued.
- b) A 10-year history by operator of gas safety violations found by the Commission for all jurisdictional natural gas system operators.
- c) Template documents for the following:
 - 1) Notice of probable violation and cover letter;
 - 2) Warning letter; and
 - 3) All types of inspection forms.

In addition to the above records, the Program Manager will ensure retention of "in" and "out" correspondence files, staff training files, budget files, purchase files, division safety inspection files, monthly time summary, mileage logs, and any other records deemed necessary by the Commission. All record retentions will conform to the Commission's records management policy established under NDCC 54-46-05. Duties of agency heads.

Damage Prevention:

On August 12, 2009, the Commission began enforcement of the State's excavation damage laws codified under North Dakota Century Code chapter 49-23, One-Call Excavation Notice System.

? Under administrative rules, the Commission has the authority to receive written complaints from utility operators, excavators, and members of the public and authority to process those complaints, administer civil penalties; and keep records as required.

? North Dakota Century Code chapter 49-07 provides a civil penalty for a violation of North Dakota Century Code chapter 49-23, One-Call Excavation Notice System.

? A ND Damage Prevention Plan was developed and approved by the Commission to address the enforcement of the North Dakota Century Code chapter 49-23 One-Call Excavation Notice System, to address damage prevention requirements under 49 CFR Part 192 and under 49 CFR Part 198; to address the nine elements of the PIPES Act.

? The Commission will continue to liaison with the ND One-Call Board, as needed, to report the status of complaint cases before the Commission.

Staff:

North Dakota's Gas Pipeline Safety Program is organized under the Commission, and supervised by the Director of the Public Utility Division. For 2019, approximately 8 percent of the Director's time will be for the Program. The Program utilizes a Program Manager/Inspector who will devote approximately 50% of time as Program Manager, and 50% of time as an inspector. The Program utilizes a second person as a full-time inspector. The Gas Pipeline Safety Program Manager/Inspector resigned effective September 5, 2018. The Commission will refill this position.

Inspector Training:

The Program Manager/Inspector had, and the Gas Safety Inspector has completed all required TQ Gas Pipeline Safety training courses with one exception. In CY2017, an intrastate liquefied natural gas facility became jurisdictional to the Commission. The new Program Manager/Inspector and the Inspector will attend the appropriate TQ training course as soon as practicable.



Pipeline Safety Program Estimated Budget - Calendar Year 2019

DIRECT COSTS

Compensation for Personnel Services

Supervisory personnel	\$51,254.00
Supervisory fringe benefits.....	\$22,552.00
Inspection/Investigation personnel.....	\$221,748.00
Inspection/Investigation fringe benefits.....	\$97,569.00
Damage Prevention/Technical personnel.....	\$0.00
Damage Prevention/Technical fringe benefits.....	\$0.00
Administrative personnel.....	\$0.00
Administrative fringe benefits.....	\$0.00

Activities

Communication and Transportation Costs.....	\$0.00
Maintenance and repair costs.....	\$0.00
Memberships, Subscriptions and professional activity costs	\$1,050.00
*Professional Service Costs	\$0.00
Publication and printing costs	\$2,000.00
Rental costs of real property and equipment	\$4,400.00
Training and Education costs	\$0.00
Travel Costs	\$89,245.00

Materials and Equipment

Materials and Supplies including costs of computing devices.....	\$0.00
Equipment and other capital expenditures	\$600.00

Other(Specify):

INDIRECT COSTS

Indirect costs incurred by State Agency(i.e. Public Utilities Commission, Public Service Commission, State Corporation Commission).	\$78,625.00
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TOTAL ESTIMATED COSTS	\$569,043.00
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*Please see next page for details if applicable.

Budget Page Notes

Equipment cost > \$5000:

Equipment Cost: \$600.00

Equipment Itemized List:



Attachment 3

STATE JURISDICTION AND AGENT STATUS

Operator Type	State Agency Jurisdiction/ Agent Status	
	No ¹	Yes
Distribution		
Private		X/60105
Municipal		X/60105
Master Meter		X/60105
LPG		X/60105
Other		X/60105
Transmission		
Intrastate		X/60105
Interstate	F	
LNG		
Interstate	F	
Intrastate		X/60105
Other		
Gathering Lines		X/60105
Offshore Facilities		X/60105

¹Codes: A - None in state and does not have jurisdiction;

B - State does not have jurisdictional authority (Provide current status or action being taken to obtain authority in notes section below)

F - No, State is currently not an interstate agent.

X/60105P = Yes, I have Section 60105 (Certification) over some of the operator type (meaning: I have 60105 authority over some, but not all of this operator type and do not have a 60106 agreement with PHMSA to inspect them). These operators are identified in the notes below.

X/IA - Yes I have Interstate Agent jurisdiction over this type of operator

Distribution "Other" - ie Co-ops, Public Utility Districts, etc.

States should explain any special circumstances

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

The **North Dakota Public Service Commission** (herein referred to as the “Recipient”), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the **Pipeline and Hazardous Materials Safety Administration**, is subject to and will comply with the following:

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);
- 49 C.F.R. 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*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

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

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, 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, gender, 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 DOT, including the **Pipeline and Hazardous Materials Safety Administration**.*

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, institutional-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 Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted ***PHMSA Pipeline Safety Base Grant***:

1. The Recipient 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.
2. The Recipient 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 the ***PHMSA Pipeline Safety Base Grant*** and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The North Dakota Public Service Commission 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 with respect to 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.”

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 the 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, the Regulations, and this Assurance.

10. 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.

By signing this ASSURANCE, North Dakota Public Service Commission also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the *Pipeline and Hazardous Materials Safety Administration* 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 *Pipeline and Hazardous Materials Safety Administration*. You must keep records, reports, and submit the material for review upon request to *Pipeline and Hazardous Materials Safety Administration*, 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.

North Dakota Public Service Commission 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 the *PHMSA Pipeline Safety Base Grant*. This ASSURANCE is binding on North Dakota, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the *PHMSA Pipeline Safety Base Grant*. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

_____ **North Dakota Public Service Commission** _____
 (Name of Recipient)

by _____ *Randy Christmann* _____
 (Signature of Authorized Official)

DATED _____ *09/21/2018* _____

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 the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Pipeline and Hazardous Materials Safety Administration*, 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, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. *[Include Modal Operating Administration specific program requirements.]*
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 will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Modal Operating Administration specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the 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 *Pipeline and Hazardous Materials Safety Administration* 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 *Pipeline and Hazardous Materials Safety Administration*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Pipeline and Hazardous Materials Safety Administration* 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 procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *Pipeline and Hazardous Materials Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. 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.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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 U.S. Department of Transportation as authorized by law and upon the condition that the (Title 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 (Name of Appropriate Program), and the policies and procedures prescribed by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation 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 (Title of Recipient) all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (Title 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 will be binding on the (Title of Recipient), its successors and assigns.

The (Title of Recipient), 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, or national origin, 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 (Title of Recipient) 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, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. 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 U.S. 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 make clear the purpose of Title VI.)

APPENDIX C

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

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

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her 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 U.S. 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, or national origin, 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, (Title of Recipient) 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, the (Title of Recipient) 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 (Title of Recipient) and its assigns.*

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

APPENDIX D

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

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

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her 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, or national origin, 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, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (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, ***(Title of Recipient)*** 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, ***(Title of Recipient)*** will there upon revert to and vest in and become the absolute property of ***(Title of Recipient)*** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear 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:

Pertinent Non-Discrimination 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); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (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 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); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (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 nondiscrimination 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, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).