

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,

Plaintiff,

v. Civil Action No.

THE TENNESSEE DEPARTMENT OF
TRANSPORTATION,

Defendant.

AGREEMENT

I. INTRODUCTION

The United States and the Tennessee Department of Transportation (TDOT) seek court approval of this Agreement, into which they have entered in the spirit of mutual cooperation. The purpose of this Agreement is to build on existing efforts by TDOT to improve recruitment and selection practices for the positions of Highway Maintenance Worker I (HMWI) and Transportation Assistant I (TAI), so as to attain a workforce of qualified male and female employees reflective of their respective levels of interest in those jobs. The Tennessee Department of Personnel (TDOP) has agreed to assist the United States and TDOT in furtherance of this goal and has entered into a Memorandum of Understanding (MOU) with the United States for this purpose. The measures that TDOP has agreed to take, and which are described in this Agreement, are memorialized in the MOU, a copy of which is attached as Exhibit A of this Agreement.

This matter arises out of a complaint filed by the United States alleging that the recruitment and selection procedures used by TDOT for the HMWI and TAI positions have the purpose or effect of discriminating against women in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, etseq., as amended ("Title VII"). TDOT denies all allegations of unlawful discrimination, but has cooperated with the United States in efforts to ensure fairness in its recruitment and selection processes for the HMWI and TAI positions.

The parties, being desirous of appropriately settling this action, agree to the jurisdiction of this Court over them and the subject matter of this action for the purpose of entering this Agreement as an order of the Court, and hereby waive the entry of findings of fact and conclusions of law. The parties, desiring to avoid protracted and unnecessary litigation, also accept this Agreement as final on the issues raised by the complaint. This Agreement, being entered with the consent of the parties, shall not constitute an admission, adjudication or finding on the merits of this action. Except to the extent of consenting to the Court's jurisdiction over this Agreement during the life of the Agreement, TDOT does not waive any defenses in this matter, including but not limited to jurisdictional defenses or defenses based upon sovereign immunity or upon the Eleventh Amendment to the United States Constitution.

In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS and ORDERS the following:

II. DEFINITIONS

1. "Agreement" shall mean this document and all appendices, exhibits and attachments thereto.
2. "Applicant database" shall mean the database maintained by TDOP, for the life of this Agreement, of all applicants applying for HMWI and/or TAI positions, whether or not included on the computer registry, and which contains information regarding (a) the date the application was entered into the TDOP job applicant system; (b) whether the applicant was hired and for what position; and (c) the race, national origin and gender of the applicant.
- 3a. "Candidate list" shall mean the list of all HMWI and TAI applicants who are on the TDOP computer registry that is used to fill a vacancy in either of these job classifications. For HMWI vacancies, the candidate list shall include, at a minimum, the HMWI applicants identified on the computer registry as residents of the county in which the vacancy exists; provided, however, that if there are no female applicants identified as residents of that county, then the candidate list shall include, at a minimum, the applicants identified as residents of the TDOT district in which the vacancy exists. For TAI vacancies, the candidate list shall include, at a minimum, the TAI applicants identified on the computer registry as residents of the TDOT district in which the vacancy exists.
- 3b. "Annotated candidate list" shall mean the candidate list as annotated by the interviewing official after the interview process is completed for a HMWI or TAI position, so as to indicate (1) the name of the interviewing official; (2) the date of each interview; (3) the position for which the vacancy existed; (4) whether, for each applicant, the applicant was contacted in writing, responded to the contact, accepted or rejected the opportunity to interview, and was interviewed, (5) the gender of each applicant interviewed; (6) how each applicant interviewed learned about the job; and (7) the name of the applicant recommended for hire.
4. "Computer registry" shall mean the non-competitive computer registry maintained by TDOP of all minimally qualified applicants for HMWI and/or TAI positions and containing (1) the name, address and telephone number of the applicant; (2) the job classification(s) for which the applicant is applying; (3) the date the application is added to the computer registry; and (4) the county or counties in which the applicant is willing to work.
5. "Date of entry of this Agreement" shall mean the date that the Court gives final approval to this Agreement by signing and entering it as an Order of the Court.
6. "Date of contractor hire" shall mean the date that a marketing/communications contractor signs the contract with TDOT for the implementation of the Recruitment Plan described in this Agreement.
7. "Hiring contact" shall mean the individual designated by each TDOT regional office as responsible for obtaining a candidate list when HMWI and TAI vacancies occur; contacting all individuals on the candidate list; forwarding the candidate list to the interviewing official and performing such other duties as are described in this Agreement.
8. "HMWI" shall mean the job classification of Highway Maintenance Worker I with TDOT and shall include any title changes to this job classification within the life of this Agreement.
9. "Interviewing official" shall mean the individual responsible for conducting the interviews of HMWI and TAI applicants in accordance with the terms of this Agreement and performing such other duties as are described in this Agreement.
10. "Reasonable time" shall mean the amount of time required to complete a task that receives prompt

attention.

11. "Recruitment Plan" shall mean TDOT's plan to attract qualified female applicants for HMWI and TAI positions, as described in § III.A. of this Agreement.

12. "TAI" shall mean the job classification of Transportation Assistant I with TDOT and shall include any title changes to this job classification within the life of this Agreement.

13. Time frames: All time frames and time requirements set forth in this Agreement shall apply only for the life of this Agreement and shall expire with the expiration of the Agreement.

14. "Title VII" shall mean Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, etseq., as amended.

15. "TDOP" shall mean the Tennessee Department of Personnel.

16. "TDOT" shall mean the Tennessee Department of Transportation.

III. RECRUITMENT

A. TDOT agrees to take steps to attract qualified female applicants for HMWI and TAI positions in numbers that reflect their availability in the relevant labor market.

1. Recruitment Plan

TDOT shall develop and implement a recruitment plan directed at increasing the number of qualified female applicants for HMWI and TAI positions. TDOP agrees to assist in the development and implementation of this plan as required. The Recruitment Plan shall be overseen by TDOT's Civil Rights office and shall include at least the following elements:

a. Media Coverage and Advertisements

(1) Print media advertisements regarding the availability of positions within TDOT, including at least HMWI and TAI positions. The print media advertisements shall be run at least monthly in a variety of publications, including both general circulation newspapers and magazines and publications with a high percentage of female readers. The advertisements shall appear both in the classified and feature sections of the designated publications. The feature section advertisements shall depict women working in various positions within TDOT, including at least HMWI and TAI positions. The appropriate publications will be identified by the marketing/communications contractor, hired by TDOT to implement this Recruitment Plan, within one month from the date of contractor hire. The advertisements shall begin to run within a reasonable time following the selection of the publications.

(2) Radio advertisements on a variety of designated stations, including those with a high percentage of female listeners. The radio advertisements shall concern the availability of various positions within TDOT, including at least HMWI and TAI positions, and shall be run at least monthly. The appropriate radio stations shall be identified by the marketing/communications contractor, hired by TDOT to implement this Recruitment Plan, within one month from the date of contractor hire. The advertisements shall begin to run within a reasonable time following the selection of the radio stations.

(3) Professionally produced television advertisements, depicting women working in various positions

within TDOT, including at least HMWI and TAI positions. The television advertisements shall be shown at least four times per year in all major media markets throughout Tennessee and during a time of day demonstrated to attract the greatest number of female viewers. The appropriate media markets and times of day will be identified by the marketing/communications contractor, hired by TDOT to implement this Recruitment Plan, within one month from the date of contractor hire. The advertisements shall begin to run within a reasonable time following the selection of the media markets.

(4) TDOT shall request radio stations with a high percentage of female listeners, as identified by the marketing/communications contractor hired by TDOT to implement this Recruitment Plan, and all cable television stations in Tennessee offering free community advertising to consider broadcasting public service announcements at least once a month, regarding the availability of various positions within TDOT, including at least HMWI and TAI positions.

(5) TDOT shall seek to participate on a quarterly basis in the "Employment Security Works" television show to discuss various job classifications within TDOT, including at least the HMWI and TAI job classifications.

(6) All print, radio and television announcements and advertisements shall (a) state that TDOP is accepting applications for various positions within TDOT, particularly HMWI and TAI positions; (b) describe the benefits available to TDOT employees; (c) provide an overview of at least the HMWI and TAI job classifications; (d) explain how and where to apply; and (e) emphasize that TDOT is an equal employment opportunity employer.

(7) The type, number and circulation range of publications, radio and television stations to be utilized for these advertisements shall be identified by the marketing/communications contractor hired by TDOT to implement this Recruitment Plan, within one month from the date of contractor hire. TDOT shall advise the marketing/communications contractor that in making its selections it is to be guided by the goal of increasing the number of qualified female applicants, particularly for HMWI and TAI positions.

(8) The United States shall have the right to review a draft of all print announcements and a tape of all television and radio announcements sufficiently in advance of planned final production to allow for its comment and objection. Approval shall not be unreasonably withheld.

(9) TDOT's Civil Rights office shall take steps to encourage print and broadcast journalists to write or produce feature stories regarding women in various positions within TDOT, particularly HMWI and TAI positions.

b. Brochures and Public Announcements

(1) Development of a brochure that features women working in various positions within TDOT, including at least HMWI and TAI positions.

(2) Development of posters that feature women working in various positions within TDOT, including at least HMWI and TAI positions.

(3) All of the TDOT brochures and posters described in this Agreement shall state (a) that TDOP is accepting applications for various positions within TDOT, particularly HMWI and TAI positions; (b) describe the benefits available to TDOT employees; (c) provide an overview of at least the HMWI and TAI job classifications; (d) explain how and where to apply; and (e) emphasize that TDOT is an equal employment opportunity employer.

(4) Copies of the brochures and posters described in this Agreement shall be distributed by TDOT's Civil Rights office in accordance with a list of designated locations likely to attract a significant percentage of female prospective applicants for vacant positions within TDOT, particularly HMWI and TAI positions. The locations shall be identified by the marketing/communications contractor, hired by TDOT to implement this Recruitment Plan, within one month from the date of contractor hire. The brochures and posters shall be distributed within a reasonable time following the selection of the locations.

(5) The United States shall have the right to review a draft of all brochures and posters described in this Agreement sufficiently in advance of planned final production to allow for its comment and objection. Approval of the brochures and posters shall not be unreasonably withheld.

(6) Development of a short "tear-off" form, to be used in conjunction with the brochures and posters described in this Agreement, that allows an interested individual to request a copy of a State employment application by mail from TDOT's personnel office.

c. Job Posting and Vacancy Notification

(1) Continuous posting in prominent locations in designated state office buildings and designated locations where State of Tennessee job applications are available, to be determined by the TDOT Personnel office within one month of the date of entry of this Agreement; and in all TDOT regional, district, county and field construction offices of (a) job vacancy announcements for HMWI and TAI positions; (b) job descriptions for those job classifications; and (c) the brochures and/or posters described in this Agreement. In determining the posting locations, the TDOT Personnel office shall include a representative geographic and demographic sample of the State as well as those locations most frequented by members of the public.

(2) Continuous posting on the web site for TDOT of (a) job vacancy announcements for HMWI and TAI positions; (b) job descriptions for those job classifications; (c) job locations of all available positions (updated within a reasonable time following a vacancy's occurrence); (d) a description of the benefits available to TDOT employees; (e) an explanation of how and where to apply; and (f) a statement that TDOT is an equal employment opportunity employer. TDOT agrees to continuous posting of this same information by means of a link on its web site to TDOT's web site. TDOT shall also request the Tennessee Department of Labor and Workforce Development to place a link on its web site to TDOT's employment opportunity web site.

d. Community Outreach

(1) Schools

(a) Contact with all high school and high school level vocational/technical school career and/or guidance counselors, including written contact by TDOT's Civil Rights office at the start of the school year providing a copy of the brochure described in this Agreement, along with job descriptions for entry-level positions within TDOT. The job descriptions shall include at least descriptions for the HMWI and TAI job classifications. If TDOT has vacancies for HMWI and TAI positions on a continuous basis in the county where the school is located, then this information shall be stated in the letter.

(b) Written contact by TDOT's Civil Rights office with all high school and high school level vocational/technical school career and/or guidance counselors within one month of the end of the school year in any county where an entry level TDOT vacancy exists, including a vacancy for a HMWI or TAI

position.

(c) All written contacts shall state (a) that TDOP is accepting applications for entry level positions within TDOT, including HMWI and TAI positions; (b) describe the benefits available to TDOT employees; (c) provide an overview of the HMWI and TAI job classifications; (d) explain how and where to apply and (e) emphasize that TDOT is an equal employment opportunity employer.

(d) Adoption of two high schools or high school level vocational/technical schools per TDOT region, at least one of which shall be in an area of high unemployment or predominantly low income students, for the purpose of more frequent contacts than those described above, including special targeting efforts for the HMWI and TAI job classifications with a focus on educating students about employment opportunities for women in non-traditional jobs.

i. TDOT's Civil Rights office shall select and make initial contact with the schools. TDOT's Civil Rights office shall seek input from local and regional TDOT offices in the selection of schools and may request their involvement in fulfilling the responsibilities of this paragraph.

ii. At the discretion of TDOT's Civil Rights office, TDOT may adopt the same two schools per region for the life of this Agreement, or may chose to vary one or both of the schools adopted in each region in each school year.

(2) Community Organizations

(a) Contact with community organizations, particularly those promoting career opportunities for women, including, but not limited to, all of the community organizations listed in Exhibit B of this Agreement. Contacts shall consist of at least the following:

i. written contact by TDOT's Civil Rights office at least twice a year providing a copy of the brochure described in this Agreement, along with job descriptions for the HMWI and TAI job classifications;

ii. quarterly telephone contact by TDOT's Civil Rights office, which shall be logged for record keeping purposes; and

iii. in the event that TDOT should cease to have continuous vacancies for both the HMWI and TAI positions, then TDOT's Civil Rights office shall provide notification of all HMWI and TAI vacancies to all national and state organizations, and any local organizations within the TDOT region where the vacancy occurs, on the list of community organizations in Exhibit B of this Agreement. Notice shall be provided within a reasonable time of a vacancy's occurrence.

(b) All written contacts with community organizations shall state (a) that TDOP is accepting applications for HMWI and TAI positions; (b) describe the benefits available to TDOT employees; (c) provide an overview of the HMWI and TAI job classifications; (d) explain how and where to apply and (e) emphasize that TDOT is an equal employment opportunity employer. All telephone contacts shall include discussion of these same points.

(3) Social Service Organizations and Public Officials

(a) Contact with national, state and local social service organizations and public officials, including, but not limited to, those listed in Exhibit B of this Agreement. Contacts shall consist of at least the following:

- i. written contact by TDOT's Civil Rights office at least twice a year providing a copy of the brochure described in this Agreement, along with job descriptions for the HMWI and TAI job classifications; and
- ii. in the event that TDOT should cease to have continuous vacancies for both the HMWI and TAI positions, then TDOT's Civil Rights office shall provide notification of all HMWI and TAI vacancies to all national and state social service organizations, and any local organizations and local public officials within the TDOT Region where the vacancy occurs, in accordance with the list in Exhibit B of this Agreement. Notice shall be provided within a reasonable time of a vacancy's occurrence.

(b) All written contacts with social service organizations and public officials shall state (a) that TDOT is accepting applications for HMWI and TAI positions; (b) describe the benefits available to TDOT employees; (c) provide an overview of the HMWI and TAI job classifications; (d) explain how and where to apply and (e) emphasize that TDOT is an equal employment opportunity employer.

(4) Community Events

(a) Participation in at least one job fair/career day per year in each of TDOT's four regions, targeted toward the recruitment of women for entry level positions within TDOT, including at least HMWI and TAI positions, subject, in each region, to the occurrence of such an event at which recruitment for these job classifications would be appropriate.

(b) Participation, through promotion of HMWI and TAI job classifications, in at least one public event, local festival, county fair or other civic occasion per year, in each of TDOT's four regions, in locations with high rates of unemployment or a predominantly low income population.

2. Implementation of Recruitment Plan

a. Within thirty (30) days of the date of entry of this Agreement TDOT shall issue a request for proposal to provide marketing and communication services to implement the Recruitment Plan set forth in §§ III.A.1. a through d, above. The request for proposal shall contain the description of the services to be provided by the marketing/communications contractor in order to implement the Recruitment Plan, set forth in Exhibit C of this Agreement. TDOT shall enter into a contract with a marketing/communications contractor within a reasonable time following the date of issuance of the request for proposal and in accordance with Tennessee state law pertaining to procurement of services.

b. TDOT shall begin to implement those aspects of the Recruitment Plan that do not require the assistance of the marketing/communications contractor as of the date of entry of this Agreement.

3. Recruitment Goals

TDOT shall make good faith efforts, including those outlined above, to achieve the following goals for representation of qualified female applicants for HMWI and TAI positions. These goals are designed to increase the numbers of female applicants and to remedy historic and existing shortfalls in the applicant pool for these job classifications. The parties agree that the failure to meet any of these goals shall not, in and of itself, be considered proof of bad faith.

a. During the first year following the effective date of this Agreement, TDOT agrees to make good faith efforts to achieve a goal of 25% representation of qualified female applicants for both the HMWI and TAI job classifications.

b. At the end of one year from the effective date of this Agreement, the parties shall meet and confer for the purpose of establishing a female recruitment goal for the remaining four years of this Agreement. This goal may be higher, lower or the same as the recruitment goal for the first year. It shall be based on a review of the recruitment efforts made up to that point by TDOT, as well as on the parties' assessment of the appropriate measure of women's level of interest in the HMWI and TAI job classifications. In the event that the parties are unable to agree upon a goal, the parties may agree to voluntary mediation, or either party may submit the matter to the Court for determination.

c. The United States and TDOT shall also meet at the end of the first year, and in each successive year for the life of this Agreement, to determine the success of various recruiting methods in meeting the recruitment goal for that year. The meetings shall be held within one month after the end of a reporting period, described in § IX.A.1. The marketing/communications contractor hired by TDOT shall prepare a report one month prior to these meetings which sets forth its expenditures for each of the components of the Recruitment Plan; its assessment of the success of each of those components in attracting qualified female applicants for positions within TDOT, including at least the HMWI and TAI positions; and its assessment of whether any aspect of the Recruitment Plan should be refocused, eliminated or increased. The marketing/communications contractor shall also attend these meetings.

(1) In the event that the goal for the year preceding the meeting has not been achieved, the parties shall discuss and TDOT shall consider additional and/or redirected recruitment efforts and whether the expenditure of additional funds would effectuate achievement of the goal. If the parties agree that the expenditure of additional funds is likely to increase the representation of female applicants, TDOT agrees to increase its total expenditures for recruitment efforts for the following year by up to 10%. However, if despite TDOT's best efforts and as a result of budgetary constraints beyond TDOT's control, TDOT requests but is denied all or a portion of the funds required for such increased expenditures, then, subject to the provisions of subsection (2) below, TDOT shall be required to make increased expenditures for recruitment efforts only up to the level for which it receives funding.

(2) In the event that the parties disagree about (a) whether the expenditure of additional funds would effectuate the purposes of the Agreement; (b) the amount of additional funds to be expended; and/or (c) whether budgetary constraints beyond TDOT's control would limit TDOT's ability to make increased expenditures, despite TDOT's best efforts, the parties may agree to voluntary mediation, or either party may submit the matter to the Court for determination.

IV. APPLICATION PROCESS

A. TDOT shall ensure that the application process for HMWI and TAI positions is fair, open and competitive.

1. Distribution and Acceptance of Applications

a. TDOT shall provide a State of Tennessee application form to any woman interested in applying for a HMWI and/or a TAI position and who requests an application, regardless of whether a vacancy exists at the time of her inquiry. TDOT agrees that it shall also make application forms available to women interested in those job classifications.

(1) TDOT agrees that it shall keep a record of the number of applications requested through use of the "tear-off" form described in § III.A.1.b(6) of this Agreement.

b. TDOT shall not accept any applications for HMWI and TAI positions, but shall provide applicants

with stamped, self-addressed envelopes for mailing the applications to TDOP. TDOP agrees that it shall accept such applications.

2. Review, Processing and Retention of Applications

- a. Each TDOT regional office shall designate a hiring contact.
- b. TDOT shall develop uniform written application procedures for filling all vacancies for HMWI and TAI positions, which shall be followed in all cases.
- c. TDOP agrees to screen all applications for HMWI and TAI positions that it receives to determine if the applicants satisfy the minimum requirements of the job classification(s) for which they are applying.
- d. TDOP agrees to maintain a non-competitive computer registry of all minimally qualified applicants for HMWI and/or TAI positions and to enter any such applicants into the registry within a reasonable time of receipt of the application. The computer registry shall contain:
 - (1) the name, address and telephone number of the applicant;
 - (2) the job classification(s) for which the applicant is applying;
 - (3) the date the application is added to the computer registry; and
 - (4) the county or counties in which the applicant is willing to work.
- e. TDOP agrees to maintain an individual's name on the computer registry for a period of at least two years.
 - (1) An individual may be removed from the computer registry in a shorter period of time, if the individual: (a) is hired for a HMWI or TAI position; (b) informs TDOP that s/he wishes to be removed from the list; (c) fails to respond to an invitation to interview for a HMWI or TAI position; (d) indicates a lack of interest in a HMWI or TAI position; or (e) is passed over for a HMWI or TAI position a total of three times.
- f. In the event that TDOP receives an application on which the applicant fails to designate the job for which s/he is applying, TDOP agrees that it shall include that applicant's name in the computer registry for the HMWI, and if qualified, the TAI job classification, unless the applicant's educational qualifications are such that s/he would be significantly overqualified for those job classifications.
- g. TDOP agrees to maintain all applications for the HMWI and TAI job classifications for a period of at least two years.
- h. TDOP agrees to maintain an applicant database of all applicants applying for HMWI and/or TAI positions, whether or not included on the computer registry, which shall include information regarding the date the application was entered into the TDOP job applicant system; (b) whether the applicant was hired and for what position; and (c) the race, national origin and gender of the applicant. TDOP agrees to maintain this database for the life of this Agreement.

V. SELECTION PROCESS

A. TDOT shall ensure that the selection process for HMWI and TAI positions is fair, open and competitive.

1. Selection from computer registry

- a. The computer registry maintained by TDOP shall be accessible by all TDOT regional offices.
- b. The hiring contact in each TDOT regional office shall be trained to access the TDOP computer registry.
- c. TDOT shall not maintain a separate computer registry of HMWI or TAI applicants.
- d. As soon as a vacancy occurs for a HMWI or TAI position in any local TDOT office, that office shall notify the TDOT hiring contact. The hiring contact shall immediately notify TDOT's Civil Rights office.
- e. Depending on whether a HMWI or TAI position is being filled, the TDOT hiring contact shall obtain a copy of either the HMWI or TAI candidate list. For HMWI vacancies, the candidate list shall include, at a minimum, the HMWI applicants identified on the computer registry as residents of the county in which the vacancy exists; provided, however, that if there are no female applicants identified as residents of that county, then the candidate list shall include, at a minimum, the applicants identified as residents of the TDOT district in which the vacancy exists. For TAI vacancies, the candidate list shall include, at a minimum, the TAI applicants identified on the computer registry as residents of the TDOT district in which the vacancy exists.
- f. The hiring contact shall immediately contact all of the applicants on the candidate list in writing and invite them to schedule an interview with the TDOT interviewing official for the location where the HMWI or TAI vacancy exists.
 - (1) The letter shall inform each applicant that his or her name may be removed from the computer registry of eligible candidates maintained by TDOP if s/he fails to respond to the invitation to interview; if s/he states a lack of interest in the HMWI or TAI position; or if s/he is not selected for a HMWI or TAI position a total of three times.
 - (2) The hiring contact shall then forward the candidate list to the interviewing official.
- g. All applicants who respond within the designated time frame shall be given an interview, in accordance with the interview requirements outlined below. No selection shall be made until all interviews are completed, except that applicants who fail to show for an interview need not be interviewed unless they have arranged in advance to reschedule the interview.

2. Exceptions to selection from the computer registry

- a. TDOT shall not be required to use the computer registry or the interview process described in § V.A.1. to make an appointment to a HMWI or TAI position under the following circumstances:
 - (1) when an applicant who has previously completed a six month probationary period as a HMWI or TAI is seeking re-employment under Tennessee Code Annotated § 8-30-311;
 - (2) when a current State employee is being removed from another position in State government because of a reduction in force, demotion for cause or voluntary demotion; or

(3) when a current employee is being transferred or reclassified from another HMWI or TAI position.

3. Interview Requirements

a. No applicant for a HMWI or TAI position shall be hired without an interview, except as provided in § V.A.2. above.

b. Within sixty (60) days of the date of entry of this Agreement, TDOT shall state in writing the criteria used to evaluate applicants interviewed for the HMWI and TAI positions and shall provide all interviewing officials with these criteria.

c. A written list of job-related questions shall be prepared within sixty (60) days of the date of entry of this Agreement and all applicants interviewed for a vacant HMWI or a vacant TAI position shall be asked the same questions in addition to whatever other related follow-up questions the interviewing official deems appropriate. All applicants shall be asked how they learned of the position for which they are applying.

d. The same individual(s) shall interview all of the applicants interviewed for a particular HMWI or a TAI vacancy.

e. The interviewing official shall maintain notes of each interview. The notes shall state in writing the basis for the rejection of each rejected interviewee.

f. After the interview process is completed, the interviewing official and hiring contact shall prepare an annotated candidate list which indicates (1) the name of the interviewing official; (2) the date of each interview; (3) the position for which the vacancy existed; (4) whether, for each applicant, the applicant was contacted in writing, responded to the contact, accepted or rejected the opportunity to interview, and was interviewed, (5) the gender of each applicant interviewed; (6) how each applicant interviewed learned about the job; and (7) the name of the applicant recommended for hire.

4. Selection Requirements

a. When any local office makes a recommendation to hire an applicant to fill a HMWI or TAI vacancy, that office shall forward its recommendation, along with the interview notes and the annotated candidate list, to the hiring contact.

b. The hiring contact shall forward the hiring recommendation, the annotated candidate list and the interview notes to the appropriate TDOT Regional Director for review and approval.

c. If the Regional Director approves the selection, s/he shall forward the name of the individual selected, the annotated candidate list and the interview notes to the TDOT Human Resources Office.

d. The TDOT Human Resources office shall forward the name of the individual selected, the annotated candidate and the interview notes to TDOP and, simultaneously, to the TDOT Civil Rights office.

e. TDOP agrees that it shall review the annotated candidate list to ensure that all individuals on that list were contacted and interviewed if they so requested. TDOP further agrees that it shall not grant approval to hire the selected individual unless TDOT demonstrates that the required contacts and interviews occurred.

f. The annotated candidate lists and interview notes shall be reviewed by TDOT's Civil Rights office upon receipt to ensure that the procedures required by this Agreement have been followed.

g. TDOT's Civil Rights office shall contact the TDOT Human Resources Office on a monthly basis to ascertain whether any HMWI or TAI vacancies have been filled without completion of the annotated candidate list. In the event that no annotated candidate list was completed, TDOT's Civil Rights office shall assist the local office in preparing the appropriate form as soon as possible.

VI. ASSIGNMENTS

A. TDOT Supervisors shall ensure that no unlawful discrimination occurs, on the basis of gender, in the nature or volume of tasks required to be performed by male and female HMWIs or TAIs. A grievance procedure for complaining about gender based assignments shall be prominently posted in all TDOT offices.

VII. EQUAL EMPLOYMENT OPPORTUNITY TRAINING

A. TDOT shall ensure that all employees are regularly trained and reminded of its commitment to gender equality.

1. TDOT shall provide mandatory annual EEO training to all supervisory and non-supervisory employees in maintenance and construction positions (including all individuals in the HMW and TA job series), which shall include discussion of the disciplinary consequences that would follow for any employee whose conduct was determined to constitute discrimination on the basis of gender.

2. TDOT shall provide mandatory bi-annual EEO training to all personnel involved at an advisory or decision making level in the recruitment or hiring process or supervision for HMWI or TAI positions. Topics for training shall include: (a) applicant evaluation; (b) employee selection and non-discriminatory assignment practices; (c) the integration of women into the workforce; (d) sexual harassment; and (e) discussion of the terms and conditions of this Agreement and of the disciplinary consequences of failure to follow this Agreement. Not every topic must be covered in every training, but all topics shall be discussed in at least one training per year.

3. TDOT's Civil Rights office shall make quarterly individual visits or telephone contacts with all TDOT officials responsible for interviewing, hiring or recommending the hiring of HMWI or TAI employees, regarding the priority which TDOT places on equal employment opportunity, fair and open hiring practices and a non-discriminatory workplace and to discuss any suggestions for different or additional recruiting contacts or techniques. These contacts shall be logged for record keeping purposes.

VIII. DISCIPLINARY ACTIONS

A. TDOT shall take appropriate disciplinary action against:

1. any employee in a maintenance or construction position (including any individual in the HMW and TA job series) whose conduct is determined by TDOT to constitute discrimination on the basis of gender.

2. any individual involved at an advisory or decision making level in the recruitment or hiring process or supervision for HMWI or TAI positions whose conduct is determined by TDOT to constitute discrimination on the basis of gender or who is determined by TDOT to have violated the terms of this

Agreement.

IX. REPORTING & RECORD KEEPING REQUIREMENTS

A. TDOT shall report bi-annually to the United States on matters relating to this Agreement.

1. Reporting Periods

a. For purposes of this Agreement, reporting periods shall run from January 1 through June 30 and July 1 through December 31 for each year, except that the first reporting period shall run from the date of entry of this Agreement until December 31, 2000. The final reporting period shall run from January 1, 2005 until the expiration of this Agreement, unless the term of the Agreement is extended or shortened in accordance with the provisions of §XII. If the Agreement term is extended reporting shall continue on a bi-annual basis. If TDOT seeks to have the Agreement term shortened, it shall submit a report at the time it seeks termination. This report shall serve as the final report if the Agreement is terminated.

2. Report Contents

a. Within thirty days from the close of each reporting period, TDOT shall provide the United States a report containing the information listed below as it relates to the preceding six-month period and the provisions of this Agreement:

(1) Recruitment information

(a) An example of all published advertisements, and examples of audiotapes of all radio and videotapes of all television advertisements.

i. appropriate documentation demonstrating the media in which advertisements were placed.

(b) all audio and video tapes of any radio or television programs and all published stories in which employment opportunities in the HMWI or TAI job classifications were discussed.

(c) an example of all brochures, posters and "tear-off forms" developed pursuant to this Agreement, along with (a) a distribution list of all locations, community and social service organizations and public officials receiving brochures or posters; and (b) a record of the number of applications requested through use of the "tear-off" form.

(d) an example of the letter sent to all high school and high school level vocational/technical school career and/or guidance counselors, along with (a) a list of all schools to which it was sent; and (b) copies of any responses.

(e) a list of the schools adopted by TDOT, pursuant to § III.A.1.d.(1)(d), along with a description of all contacts and targeting efforts made with each school.

(f) an example of the letter(s) sent to all community and social service organizations and public officials, along with (a) a list of all organizations and officials to which or to whom it was sent; and (b) copies of any responses.

(g) a copy of the telephone log of contacts made with community organizations.

(h) a list of all job fair/career days and community events in which TDOT has participated, including all supporting information demonstrating that TDOT's participation included the promotion of HMWI and TAI jobs.

(2) Applicant information

(a) a copy of the applications of all applicants interviewed for HMWI and TAI positions.

(b) all annotated candidate lists.

(c) vacancy data showing the number and location of any vacancies for HMWI and TAI positions.

(3) Selection information

(a) a list of the criteria used to evaluate applicants for HMWI and TAI positions.

(b) a list of the interview questions asked of HMWI and TAI applicants.

(c) all notes of any interview of a HMWI or TAI candidate, including all written justifications for the rejection of any interviewee.

(d) a copy of the log of quarterly visits and/or telephone contacts made by TDOT's Civil Rights Office with TDOT officials responsible for interviewing, hiring or recommending the hiring of HMWI or TAI employees.

(4) Training

(a) a list of all trainings provided pursuant to § VII of this Agreement.

(5) Discipline

(a) a description of any disciplinary action taken against any TDOT maintenance or construction employee whose conduct is determined to constitute discrimination on the basis of gender.

(b) a description of any disciplinary action taken against any TDOT employee involved at an advisory or decision making level in the recruitment or hiring process or supervision for HMWI or TAI positions whose conduct is determined to constitute discrimination on the basis of gender or who is determined to have violated the terms of the Agreement.

(6) Complaints

(a) copies of any complaints of employment discrimination and/or retaliation filed either internally or with any external local, county, state or federal agency, along with any responses.

(7) Retention

(a) the retention rates for HMWI and TAI workers, by gender and county, for the reporting period.

3. Record keeping

a. TDOT shall retain all records necessary to satisfy these reporting requirements and to establish compliance with this Agreement.

X. GENERAL INJUNCTIVE PROVISIONS

A. TDOT maintains that it has in the past satisfied the requirements of Title VII and is committed to continued obedience of the law. In furtherance of this commitment, TDOT agrees to comply with the provisions of Title VII and to refrain from any act or practice which has the purpose or effect of unlawfully discriminating against any female employee or any female applicant or potential applicant for employment, because of such individual's sex. Specifically, TDOT agrees that it shall not:

1. fail or refuse to recruit or select women on the same basis as men for the positions of HMWI and TAI;
2. discriminate against women employed as HMWIs and TAIs by assignment of tasks not performed by male counterparts;
3. create, maintain, support or condone a sexually hostile work environment, or fail to take adequate steps to prevent or remedy sexual harassment;
4. retaliate or take adverse action against any individual because that person has opposed alleged discriminatory employment policies or practices, or because of that individual's participation in or cooperation with the initiation, investigation or litigation of any formal or informal complaint of discrimination, or the initiation, investigation, litigation or administration of this action or of any formal or informal complaint relating to this action.

XI. ATTORNEYS FEES & COSTS

A. The parties shall bear their own costs, expenses and attorneys' fees that may have been or may be incurred in the negotiation and/or enforcement of this Agreement. All costs associated with the implementation of TDOT's obligations under this Agreement shall be borne by TDOT.

XII. JURISDICTION AND TERM OF AGREEMENT

A. This Agreement shall take effect as of the date that the Court gives final approval by signing and entering it as an Order of the Court. The Agreement shall run for a period of five years from that date unless extended or shortened by order of this Court as provided below.

B. The Court retains jurisdiction to enforce this Agreement during the life of the Agreement.

1. Extension of Agreement>

The parties agree that, at the end of the five-year term, this matter shall be automatically dismissed, with prejudice, in the absence of a motion by the United States to extend this Court's jurisdiction, which motion must be supported by good cause, and which may be opposed by TDOT.

a. Mere failure to meet the recruitment goals, as set forth above in § III.A.3. of this Agreement, will not constitute good cause.

b. In the event that radio, television and newspaper advertisements for the HMWI and TAI positions have not begun to run and/or posters and brochures advertising the HMWI and TAI positions have not

begun to be distributed within six months from the date of entry of this Agreement, then good cause shall exist to extend this Agreement by the number of months that have elapsed from the date of entry of the Agreement to the time that radio, television and newspaper advertisements for the HMWI and TAI positions have begun to run and posters and brochures have begun to be distributed.

c. Any motion to extend the term of this Agreement must be filed at least ninety (90) days prior to the expiration of the five-year term, unless the United States can demonstrate to the Court that good cause exists for waiving the 90 day limitation, based on the acquisition of information which was unknown or unavailable to the United States prior to the expiration of the 90 day limitation. The failure to file a timely motion for an extension shall constitute an express waiver of the right to do so, and shall be construed as the affirmative agreement of the United States to the automatic dismissal of this matter, with prejudice.

2. Early Termination of Agreement

The parties agree that the Agreement may be terminated, and this matter dismissed by the Court, prior to the expiration of the five-year term, either by joint motion of the parties or upon the motion of TDOT, which motion must be supported by proof that all of the following conditions have been met:

a. The recruitment goals that are set forth above in § III.A.3. of this Agreement have been met and maintained for a period of not less than two continuous years during the life of the Agreement;

b. The statewide retention rate for women hired for the HMWI and TAI positions is equal to or greater than 80% of the retention rate for men hired for the HMWI and TAI positions for a period of not less than two continuous years during the life of the Agreement; and

c. TDOT agrees that following early termination of the Agreement it will continue to make good faith efforts to recruit female applicants for the HMWI and TAI positions in numbers which reflect their availability in the relevant labor market.

DONE AND ORDERED this _____ day of _____, 2000.

United States District Judge
Middle District of Tennessee

Signatures of the parties follow on the next page.

Agreed and Consented To:

On behalf of the Plaintiff
United States of America
BILL LANN LEE
Acting Assistant Attorney General

Marybeth Martin
Claire L. Gregory
Michael W. Johnson

Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
P.O. Box 65968
Washington, D.C. 20035-5968
(202) 307-5769 (phone)
(202) 514-1105 (fax)

On behalf of the Defendant

Tennessee Department of Transportation

J. BRUCE SALTSMAN, SR.
Tennessee Commissioner of Transportation
505 Deaderick Street
Suite 700, James K. Polk Building
Nashville, TN 37243 (615) 532-5869 (phone)
(615) 532-5988 (fax)

PAUL G. SUMMERS
Tennessee Attorney General and Reporter

Kevin G. Steiling
Deputy Attorney General
425 Fifth Avenue, North
Cordell Hull Building
2nd Floor
Nashville, TN 37243
(615) 741-2370 (phone)
(615) 741-7327 (fax)