

**KITTITAS COUNTY  
DEPARTMENT OF PUBLIC WORKS  
AGENDA STAFF REPORT**

**AGENDA DATE:** January 18, 2012

**ACTION REQUESTED:** Approve & Sign Non-Discrimination Agreement and Title VI Annual Accomplishment Update Report for 2011 with the Washington State Department of Transportation (WSDOT) for a local agency under 100,000 Population.

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**BACKGROUND:** The Civil Rights Restoration Act of 1987 broadened the scope of Title VI of the Civil Rights Act of 1964 to include all programs or activities of Federal Aid recipients, sub-recipients, and contractors/consultants, whether such programs and activities are federally assisted or not.

The Federal Highway Administration (FHWA) requires that any local agency that receives any federal grants, loans, contracts, property, discounts or other Federal assistance extended by WSDOT enter into a non-discrimination agreement with WSDOT.

WSDOT approved Kittitas County's Title VI Program Implementation Plan on August 25, 2006. Kittitas County has also submitted a Title VI Annual Accomplishment and Update Report each year as required.

The Federal Highway Administration requires a new Non-Discrimination Agreement be submitted if the chief executive officer has changed since the last NDA or update report. The 2010 NDA and update report was signed by Paul Jewell on May 3, 2011.

**INTERACTION:** Public Works

**RECOMMENDATION:**

Move to Approve Board Chair signature on the Non-Discrimination Agreement and Title VI Annual Accomplishment Update Report for 2011

**HANDLING:**

Return 2 signed originals to Public Works

**ATTACHMENTS:**

Non-Discrimination Agreement  
Title VI Annual Accomplishment Update Report for 2011

**LEAD STAFF:**

Jan Ollivier, Public Works  
Transportation and Planning Manager

Washington State Department of Transportation and

Kittitas County

Policy Statement

The Kittitas County, hereinafter referred to as the "Recipient" assures that no person shall on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Action of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The Recipient further assures every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

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

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

The Recipients' County Engineer, is responsible for initiating and monitoring Title VI activities, preparing reports and other responsibilities as required by 23 Code of Federal Regulations (CFR) 200 and 49 Code of Federal Regulation 21.

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Alan Crankovich, Chairman of the Board  
Kittitas County Board of Commissioners

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Date

1. **Report any changes in the organizational structure since the last reporting period. (Example: New Title VI Coordinator, new planning or public works directors, etc.)**
  - **Report should identify the changes in the racial/gender composition of those persons involved in the transportation decision making, including planning and advisor staff.**
  - **If no changes have been made, please indicate that accordingly.**

The position responsible for initiating and monitoring Title VI activities has not changed; it is still the County Engineer. There have not been any changes in racial/gender composition of those persons involved in transportation decision making, including planning advisor staff. Key persons involved in transportation decision making include:

Douglas P. D'Hondt, County Engineer	Male, White, USA birthplace
Kirk Holmes, Public Works Director	Male, White, USA birthplace
Janette D. Ollivier, Transportation Manager	Female, White, USA birthplace
Roy Chance, Construction Manager	Male, White, USA birthplace

The most current Public Works organization chart is presented in Attachment A.

2. **Using the most current data available (through Census or Washington State Office of Financial Management), describe the demographics within your jurisdiction.**

Washington State Office of Financial Management data indicates the following demographics for Kittitas County:

	April 1, 2010 Estimate					
	Total	White	Black	Indian	API*	Two or More Races
<b>Washington</b>	6,733,250	5,643,462	250,429	119,352	507,143	212,864
% of total pop.		83.8%	3.7%	1.8%	7.5%	3.2%
<b>Kittitas</b>	40,500	37,762	350	454	1,222	712
% of total pop.		93.2%	0.9%	1.1%	3.0%	1.8%

\*API = Asian and Pacific Islander

- a. Describe any required Title VI activities and/or studies conducted that provided data relative to minority persons, neighborhoods, income levels, physical environment, and travel habits.**

The Average Daily Traffic (ADT) level and pavement condition is estimated for all county roads every other year at a minimum and used to prioritize future transportation improvements.

- b. How was the information utilized or Title VI provisions and needs applied in each study or activity?**

The Average Daily Traffic (ADT) level and pavement condition is used annually to prioritize future transportation improvements. All county roads are included in this analysis, considering all population groups – including minority, women, low-income, and limited English proficiency population groups equally. Title VI provisions will be met through any contracts associated with this activity.

- 3. List any Public outreach activities during the reporting period such as, public announcements and/or communications for meetings, hearings, project notices. Include the following:**

- a. How were special language needs assessed? List the special language needs assessments conducted.**

All Public Hearing agendas and minutes are available in English and Spanish. The Public Works website and access to public hearing documents on the Commissioners' website is in both English and Spanish. Documents and web pages can be translated into other languages if requested utilizing the website Babel Fish.

- b. What outreach efforts did you utilize to ensure that minority, women, low-income, and LEP population groups were provided equal opportunity to participate in those outreach activities. (Examples: provided materials in other languages, met with local social service agencies, advertised in a minority publication).**

The County translates all documents on the Public Works website and all public hearing documents on the Commissioners' website from English to Spanish. Documents and web pages can be translated into other languages if requested utilizing the website Babel Fish.

There are only two local newspapers in Kittitas County. Kittitas County advertises its open houses and public meetings in these two newspapers. In 2011, outreach activities included:

- County Road Standards Update public meetings.
- Off Road Vehicle Closure Zone public meetings.
- Flood Damage Repair public meetings.
- Nelson Siding Road Improvement project public meeting.
- Manastash Creek Bridges public meeting.
- Annual Comprehensive Plan Amendment Open Houses and public hearings.
- Transportation Improvement Program and Annual Construction Program Open Houses.
- GMA Compliance public hearings.

All open houses and public meetings are held in accessible locations during time periods that provide an opportunity for all population groups – including minority, women, low-income, and limited English proficiency population groups to participate. Open houses and public meetings are held in both Upper County and Lower County, or the pertinent neighborhood to encourage all population groups to participate, including minority, women, low-income, and limited English proficiency population groups. Holding the open houses in several locations makes it easier for persons who could not afford to drive long distances participate.

Advertisements requesting qualifications for contractual services include the following statement:

The County encourages minority and women-owned firms to submit qualifications consistent with the County's policy to insure that minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services.

Bid documents include Title VI requirements, indicating that the County provides equal opportunity for all population groups – including minority, women, low-income, and limited English proficiency population groups to participate (see Attachment B).

- c. List the special language services provided – note the professional language service provided including the name of the service, date provided, number of persons served, and any other relevant information.

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No special language services were requested for these activities.

**d. List any costs incurred for translations and interpreters for each activity.**

No translators or interpreters were requested for each of these activities.

- 4. List all the transportation related contracts (Federal and others) that were executed during the reporting period. (Please include construction, consultant agreements for planning, design, engineering, environmental, research, maintenance, etc.)**
- Include dollar value of each

<b>Description of Contract</b>	<b>Vendor</b>	<b>Amount of Contract</b>	<b>Date Signed</b>
2011 DOT Drug Testing	Anova Works	Varies - \$786.00 in 2011	1/5/2011
2011 Maintenance Rock Materials	Ellensburg Cement Products	Varies - \$190,671.18 in 2011	1/19/2011
Reimbursable Work	City of Ellensburg	\$3,000	1/1/2011
2011 Liquid Asphalt Sch. C	Albina	Varies - \$0 in 2011	3/1/2011
2011 Asphalt Bid Sch. A and B	Columbia Ready Mix	Varies - \$80,649.31 in 2011	3/1/2011
2011 Weed Spray Bid	Helena	Varies - \$51,429.34 in 2011	3/1/2011
2011 Crackseal Material Sch. A	Special Asphalt Products	Varies - \$25,170.58 in 2011	3/1/2011
2011 Liquid Asphalt Sch. A and B	Western States Asphalt	Varies - \$1,066,422.75 in 2011	3/1/2011
2011 Crackseal Material Sch. B	Arrow Construction	Varies - 6,767.66 in 2011	3/1/2011
Cooke Canyon Bridge Replacement	Big R Bridge	\$48,794	3/15/2011
Road Standards Update	PRR	\$4,890	12/27/2010
Road Standards Public Meeting Facilitation Services	Melinda Posner Consulting	\$2,520	4/14/2011
Nelson Siding Road Safety Improvements – Engineering	David Evans & Associates	\$886,830.29	7/5/2011
Kittitas Highway Safety Improvements – Engineering	Sargent Engineers	\$313,577	7/5/2011
On-Call Surveying	Encompass Engineering	Varies - \$7,271.00 in 2011	8/26/2011
Gladmar Park Eight Step Planning Process	Northwest Hydraulic Consultants Inc.	\$82,457.57	6/28/2011
Hanson Pit Master Park Plan	City of Ellensburg	\$25,000	12/20/2011

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- **Other than advertising in your local legal publication, what outreach was made to DMWBE firms that a contracting opportunity existed within your agency?**

Advertising is the only method of outreach to all persons and firms.

- **Identify the DMWBE contracts that were awarded and their dollar amount.**

Road Standards Update	PRR	\$4,890	12/27/2010
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- **Is there a Title VI Non-Discrimination statement included in all contracts and public notices?**

Yes

- **How did your organization ensure that minority, women, and disadvantaged firms were provided equal opportunity to participate in the contracting arena?**

All advertising for contractual services include the following statement:

The County encourages minority and women-owned firms to submit qualifications consistent with the County's policy to insure that minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services.

All bid advertisements include the required Title VI language and is shown in Attachment B.

5. **Summarize any transportation projects that identify potential impacts to minority and/or low income Environmental Justice (EJ) populations (i.e., impacts such as displacements, increased noise, bisecting neighborhoods, et al). Note the following:**
- **How impacts were minimized/mitigated.**
  - **Also include a statement, if applicable, on projects that specifically benefit community cohesion such as: adding sidewalks, improving access to properties that improve access for EJ populations.**

There were no transportation projects that impacted Environmental Justice populations with displacements, increased noise, bisecting neighborhoods or other similar impacts. The transportation improvements that the county performed in 2011 included:

- Striping county roads.
- Annual chip seal program - all County roads that are paved are chip sealed about once every seven years.



- Flood emergency repair.
- Bridge replacement on Cooke Canyon Road.

All other programmed transportation projects are in the engineering design phase and do not include roadway capacity increases that could impact Environmental Justice populations. The projects under design include:

- Nelson Siding Road Safety Improvements and Reconstruction.
- Kittitas Highway Safety Improvements and Reconstruction.
- Teanaway Road and North Fork Teanaway Road Safety Improvements and Reconstruction.
- Westside Road Safety Improvements and Reconstruction.
- Industrial Park Street Improvements.
- Salmon La Sac Sno-Park – off-road parking in USFS area.
- Run-Off-Road Improvements.
- Alford Road/Wilson Creek Road Intersection Safety Improvements.
- Brown Road/Umptanum Road Intersection Safety Improvements.
- Old Highway Ten Bridge Railing Retro-Fit.
- Old Highway Ten Asphalt Overlay.
- McManamy Road Bridge Replacement.

**6. If Right of Way has been acquired for a transportation project. Please describe:**

- Identify the number of minority, low-income, elderly and disabled persons affected.
- The efforts that were made to address Limited English Proficiency issues (including use and cost of translators, outreach efforts for each reported activity).
- Describe any concerns raised by minorities and women regarding appraisals, negotiations, relocation assistance, and payments. What actions were taken to resolve those issues?

Right of way and construction easements were not acquired in 2011.

**7. List and describe any Title VI related complaints, as a result of transportation activities and projects. Include:**

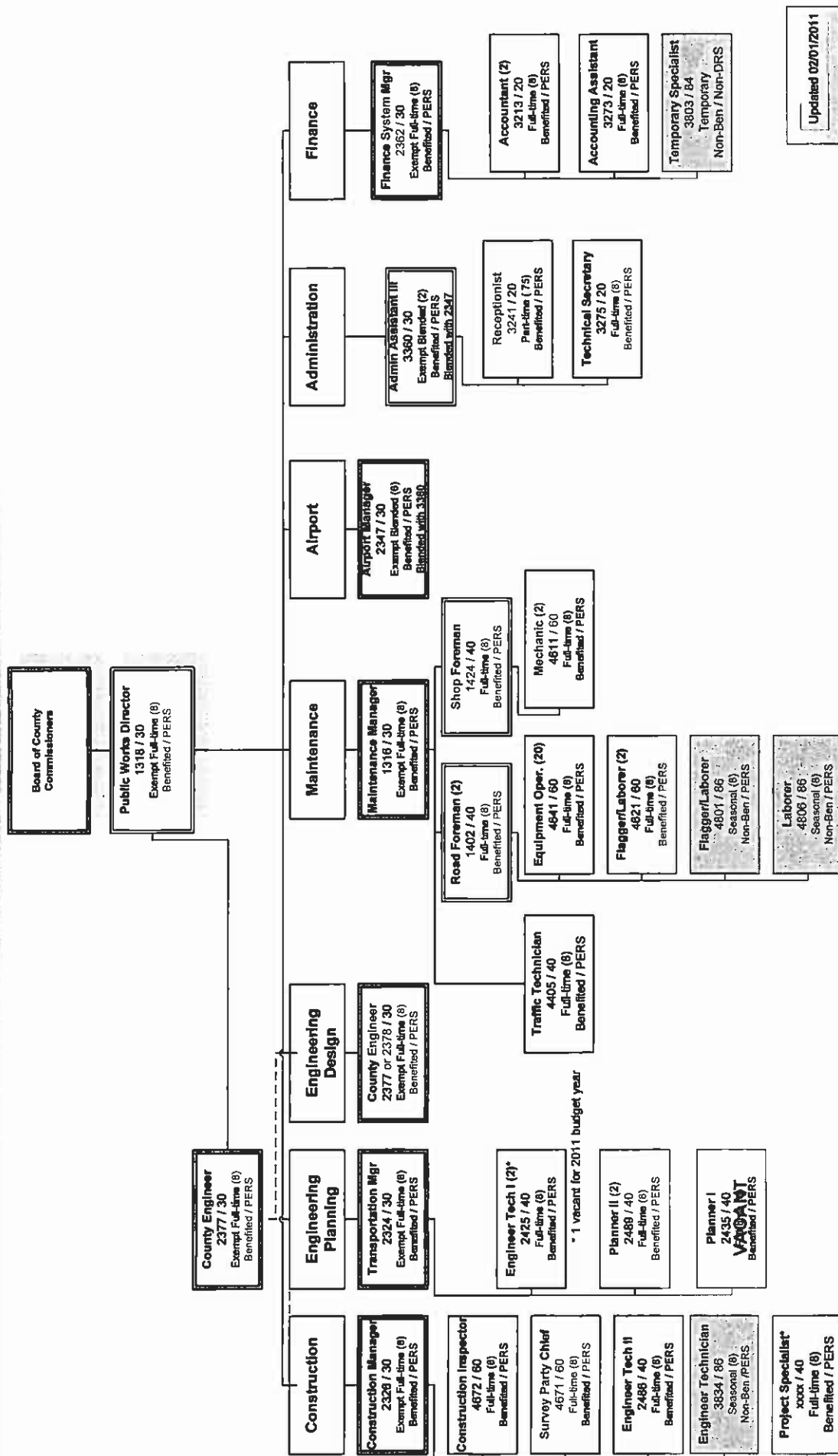
- What was the allegation or concern?
- Procedures used
- Action taken
- Resolution

No complaints were recorded in 2011.

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**Attachment A  
Public Works Organization Chart**

# 0106 -- Public Works Department Organizational Chart



Updated 02/01/2011

\* 2 year position

Attachment B  
Title VI Required Language included in All Bid Documents

**Requirements For Nondiscrimination**

Section 1-07.11 is supplemented with the following:

(March 6, 2000)

Requirement For Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Contractor's attention is called to the Equal Opportunity Clause and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth herein.
2. The goals and timetables for minority and female participation set by the Office of Federal Contract Compliance Programs, expressed in percentage terms for the Contractor's aggregate work force in each construction craft and in each trade on all construction work in the covered area, are as follows:

Women - Statewide

<u>Timetable</u>	<u>Goal</u>
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Until further notice	6.9%
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Minorities - by Standard Metropolitan Statistical Area (SMSA)

Spokane, WA:

SMSA Counties:

Spokane, WA	2.8
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WA Spokane.

Non-SMSA Counties	3.0
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WA Adams; WA Asotin; WA Columbia; WA Ferry; WA Garfield; WA Lincoln, WA Pend Oreille; WA Stevens; WA Whitman.

Richland, WA

SMSA Counties:

Richland Kennewick, WA	5.4
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WA Benton; WA Franklin.

Non-SMSA Counties	3.6
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WA Walla Walla.

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Yakima, WA:	
SMSA Counties:	
Yakima, WA	9.7
WA Yakima.	
Non-SMSA Counties	
WA Chelan; WA Douglas; WA Grant; WA Kittitas; WA Okanogan.	7.2
Seattle, WA:	
SMSA Counties:	
Seattle Everett, WA	7.2
WA King; WA Snohomish.	
Tacoma, WA	6.2
WA Pierce.	
Non-SMSA Counties	
WA Clallam; WA Grays Harbor; WA Island; WA Jefferson; WA Kitsap; WA Lewis; WA Mason; WA Pacific; WA San Juan; WA Skagit; WA Thurston; WA Whatcom.	6.1
Portland, OR:	
SMSA Counties:	
Portland, OR-WA	4.5
WA Clark.	
Non-SMSA Counties	
WA Cowlitz; WA Klickitat; WA Skamania; WA Wahkiakum.	3.8

These goals are applicable to each nonexempt Contractor's total on-site construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, or federally assisted project, contract, or subcontract until further notice. Compliance with these goals and time tables is enforced by the Office of Federal Contract compliance Programs.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, in each construction craft and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goal shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Engineer within 10 working days of award of any construction subcontract in excess of \$10,000 or more that are Federally funded, at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar

amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the Covered Area is as designated herein.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

- a. Covered Area means the geographical area described in the solicitation from which this contract resulted;
- b. Director means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. Employer Identification Number means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
- d. Minority includes:
  - (1) Black, a person having origins in any of the Black Racial Groups of Africa.
  - (2) Hispanic, a fluent Spanish speaking, Spanish surnamed person of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish origin.
  - (3) Asian or Pacific Islander, a person having origins in any of the original peoples of the Pacific rim or the Pacific Islands, the Hawaiian Islands and Samoa.
  - (4) American Indian or Alaskan Native, a person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades

which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith effort to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of this Special Provision. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its action. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

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- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunity and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news



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media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

- i. Direct its recruitment efforts, both oral and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  - j. Encourage present minority and female employees to recruit other minority persons and women and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as

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fulfilling any one or more of the obligations under 7a through 7p of this Special Provision provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensure that the concrete benefits of the program are reflected in the Contractor's minority and female work-force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrate the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspensions, terminations and cancellations of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of this Special Provision, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include, for each employee, their name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable

form; however, to the degree that existing records satisfy this requirement, the Contractors will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**(September 17, 2007)**

***Disadvantaged Business Enterprise Participation***

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR part 26 apply to this contract. The requirements of this contract are to encourage DBE participation, supply a bidder's list, and to report race neutral accomplishments quarterly as described in this special provision. No preference will be included in the evaluation of bids/proposals, no minimum level of DBE participation shall be required as a condition for receiving an award and bids/proposals will not be rejected or considered non-responsive on that basis.

**DBE Goals**

No DBE goals have been assigned as a part of this contract.

**Affirmative Efforts to Solicit DBE Participation**

DBE firms shall have equal opportunity to compete for and perform subcontracts which the Contractor enters into pursuant to this contract. Contractors are encouraged to:

1. Advertise opportunities for Subcontractors or suppliers in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids/proposals directly from DBEs.
2. Utilize the services of available minority community-based organizations, minority contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.

In addition, the Office of Minority and Women's Business Enterprises has two DBE Supportive Services Offices available to assist you as follows:

Seattle: (206) 553-7356  
Tacoma: (253) 680-7393

3. Establish delivery schedules, where requirements of the contract allow, that encourage participation by DBEs and other small businesses.

4. Achieve attainment through joint ventures.

In the absence of a mandatory goal, all DBE participation that is attained on this project will be considered as "race neutral" participation and will be reported as such.

**DBE Eligibility (for reporting purposes only)**

**Selection of DBEs:**

DBEs utilized on the contract will be eligible to be counted as race neutral participation only if the firm is identified as a DBE on the current list of firms certified by the Office of Minority and Women's Business Enterprises (OMWBE), the DBE firm is certified in the corresponding NAICS code(s) for the type of work to be performed, and the DBE firm performs a commercially useful function. A list of firms certified by OMWBE, including the NAICS codes for which they are certified, is available from that office and on line through their website ([www.omwbe.wa.gov/directory/directory.htm](http://www.omwbe.wa.gov/directory/directory.htm)) or by telephone at (360) 704-1181.

**Counting DBE Participation For Reporting Race Neutral Accomplishments**

When a DBE firm participates in a contract, only the value of the work actually performed by the DBE will be counted as race-neutral participation.

1. Count the entire amount of the portion of the contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, materials, and equipment the DBE Subcontractor purchases or leases from the Prime Contractor or its affiliate, unless the Prime Contractor is also a DBE). Work performed by a DBE, utilizing resources of the Prime Contractor or its affiliates will not be counted as race-neutral participation. In very rare situations, a DBE firm may utilize equipment and/or personnel from a non-DBE firm other than the Prime Contractor or its affiliates. Should this situation arise, the arrangement must be short-term and have prior written approval from the Contracting Agency. The arrangement must not erode a DBE firm's ability to perform a Commercially Useful Function (See discussion of CUF, below).
2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted as race neutral participation only if the DBE's lower tier Subcontractor is also a DBE. Work that a DBE Subcontracts to a non-DBE firm does not count as race neutral participation.
4. When a non-DBE subcontractor further subcontracts to a lower-tier subcontractor or supplier who is a certified DBE, then that portion of the work further subcontracted may be counted toward the DBE goal, so long as it is a distinct clearly defined portion of the work of the subcontract that

the DBE is performing with its own forces in a commercially useful function.

**DBE Prime Contractor**

A DBE prime Contractor may only count the work performed with its own forces and the work performed by DBE Subcontractors and DBE suppliers.

**Joint Venture**

When a DBE performs as a participant in a joint venture, only that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces will count as race neutral participation.

**Commercially Useful Function**

Payments to a DBE firm will count as race neutral participation only if the DBE is performing a commercially useful function on the contract.

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself. Two party checks are not allowed.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

**Trucking**

Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is listed on a particular contract.
2. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit only for the total value of the transportation services it provides on the contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs.
4. For purposes of this paragraph a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

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Annual Report  
Population Under 100,000**

5. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE may report race-neutral participation for the total value of the transportation services the lessee DBE provides on the contract.
6. The DBE may also lease trucks from a non-DBE firm and may enter an agreement with an owner-operator who is a non-DBE. The DBE who leases trucks from a non-DBE or employs a non-DBE owner-operator is entitled to count race-neutral participation only for the fee or commission it receives as a result of the lease arrangement. The DBE may not count the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
7. In any lease or owner-operator situation, as described in paragraphs 5 & 6 above, the following rules shall apply:
  - A written lease/rental agreement on all trucks leased or rented, showing the true ownership and the terms of the rental must be submitted and approved by the Contracting Agency prior to the beginning of the work. The agreement must show the lessor's name, trucks to be leased, and agreed upon amount or method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. Does not apply to owner-operator arrangements.
  - Only the vehicle, (not the operator) is leased or rented. Does not apply to owner-operator arrangements.
8. In order for payments to be counted as race-neutral participation, DBE trucking firms must be covered by a subcontract or a written agreement approved by WSDOT prior to performing their portion of the work.

**Expenditures paid to other DBEs**

Expenditures paid to other DBEs for materials or supplies may be counted toward race neutral participation as provided in the following:

**Manufacturer**

1. Counting  
If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward race neutral participation.
2. Definition  
To be a manufacturer, the firm operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

3. In order to receive credit as a DBE manufacturer, the firm must have received an "on-site" review and been approved by WSDOT-OEO to operate as a DBE Manufacturing firm. To schedule a review, the manufacturing firm must submit a written request to WSDOT/OEO and may not receive race neutral credit, until the completion of the review. Once a firm's manufacturing process has been approved in writing, it is not necessary to resubmit the firm for approval unless the manufacturing process has substantially changed. Information on approved manufacturers may be obtained from WSDOT-OEO.

**Regular Dealer**

1. Counting  
If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will count toward race neutral participation.
2. Definition
  - a) To be a regular dealer, the firm must own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. It must also be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  - b) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided elsewhere in this specification, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
  - c) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
3. Regular dealer status is granted on a contract-by-contract basis. To obtain regular dealer status, a formal written request must be made by the interested supplier (potential regular dealer) to WSDOT/OEO. Included in the request shall be a full description of the project, type of business operated by the DBE, and the manner the DBE will operate as a regular dealer on the specific contract. Rules applicable to regular dealer status are contained in 49 CFR Part 26.55.e.2. Once the request is reviewed by WSDOT-OEO, the DBE supplier requesting it will be notified in writing whether regular dealer status was approved.

**Materials or Supplies Purchased from a DBE**

With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions

charged for assistance in the procurement of the materials and supplies or fees or transportation charges for the delivery of materials or supplies required on a job site may be counted as race neutral participation. No part of the cost of the materials and supplies themselves may be applied as race neutral participation.

**Procedures Between Award and Execution**

After award of the contract, the successful bidder shall provide the additional information described below. A failure to comply shall result in the forfeiture of the bidder's proposal bond or deposit.

A list of all firms who submitted a bid or quote in an attempt to participate in this project whether they were successful or not. Include the correct business name, federal employer identification number (optional) and a mailing address.

The firms identified by the Contractor may be contacted to solicit general information as follows:

1. age of the firm
2. average of its gross annual receipts over the past three-years

**Procedures After Execution**

**Reporting**

The Contractor shall submit a "Quarterly Report of Amounts Credited as DBE Participation" (actual payments) on a quarterly basis for any calendar quarter in which DBE work is accomplished or upon completion of the project, as appropriate. The quarterly reports are due on January 20<sup>th</sup>, April 20<sup>th</sup>, July 20<sup>th</sup>, and October 20<sup>th</sup> of each year. The dollars reported will be in accordance with the **"Counting DBE Participation For Reporting Race Neutral Participation"** section of this specification.

In the event that the payments to a DBE have been made by an entity other than the Prime Contractor (as in the case of a lower-tier subcontractor or supplier), then the Prime Contractor shall obtain the quarterly report, including the signed affidavit, from the paying entity and submit the report to the Contracting Agency.

**Payment**

Compensation for all costs involved with complying with the conditions of this specification and any associated DBE requirements is included in payment for the associated contract items of work.



## **Washington State Department of Transportation and Recipient Policy Statement**

Kittitas County, hereinafter referred to as the "Recipient" assures that no person shall on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The Recipient further assures every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

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

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

The Recipient's County Engineer, is responsible for initiating and monitoring Title VI activities, preparing reports and other responsibilities as required by 23 Code of Federal Regulation(CFR) 200 and 49 Code of Federal Regulation 21.

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Alan Crankovich, Chairman of the Board  
Kittitas County Board of Commissioners

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Date

## **Title VI Program**

### ***Organization and Staffing***

Pursuant to 23 CFR 200, Kittitas County has appointed a Title VI Specialist who is responsible for Attachment 1, which describes the hierarchy for Recipient's Title VI Program, including an organization's chart illustrating the level and placement of Title VI responsibilities.

### ***Assurances***

#### ***49 CFR Part 21.7***

The Recipient hereby gives assurances:

1. That no person shall on the grounds of race, color, national origin, and sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient regardless of whether those programs and activities are Federally funded or not. Activities and programs which the recipient hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to: all transportation programs and activities of Kittitas County.
2. That it will promptly take any measures necessary to effectuate this agreement.
3. That each transportation program, activity, and facility as defined at 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987 will be (with regard to a program or activity) conducted, or will be (with regard to a facility) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.
4. That these assurances are given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the recipient by the Washington State Department of Transportation (WSDOT) under the Federally-Funded Program and is binding on it, other recipients, sub grantees, contractors, sub-contractors, transferees, successors in interest and other participants. The person or persons whose signatures appear below are authorized to sign these assurances on behalf of the Recipient.
5. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all Federally-Funded programs and, in adapted form all proposals for negotiated agreements.

*The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation,*

*Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.*

6. That the Recipient shall insert the clauses of Appendix 1 of this Agreement in every contract subject to the Act and the Regulations.
7. That the Recipient shall insert the clauses of Appendix 2 of this Agreement, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
8. That the Recipient shall include the appropriate clauses set forth in Appendix 3 of this Agreement, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under a Federal Aid Program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under a federal aid program.
9. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this agreement.

### ***Implementation Procedures***

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

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

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

### ***The Recipient shall:***

1. Issue a policy statement, signed by the chief executive officer of the Recipient, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the recipient's organization and to the general public. Such information shall be published where appropriate in languages other than English.
2. Take affirmative action to correct any deficiencies found by WSDOT or the United States Department of Transportation (USDOT) within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the Recipient shall be held responsible for implementing Title VI requirements.
3. Designate a civil rights coordinator who has a responsible position in the organization and easy access to the head of the Recipient. The civil rights coordinator shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
4. The civil rights coordinator shall adequately implement the civil rights requirements.
5. Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigation. Identify each complainant by race, color, national origin or sex, the nature of the complaint, the date the complaint was filed, the date the investigation was completed, the disposition, the date of the disposition, and other pertinent information. A copy of the complaint, together with a copy of the recipient's report of investigation, will be forwarded to WSDOT's Office of Equal Opportunity (OEO) within 10 days of the date the complaint was received by the Recipient.
6. Collect statistical data (race, color, national origin, sex) of participants in, and beneficiaries of the transportation programs and activities conducted by the Recipient.
7. Conduct Title VI reviews of the recipient and sub-recipient contractor/consultant program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.
8. Conduct training programs on Title VI and related statutes conducted by WSDOT OEO.
9. Prepare a yearly report of Title VI accomplishments for the last year and goals for the next year. This report is due from the date of approval of the Non-Discrimination Agreement and then annually on the same date. This report will include the following:
  - a) Annual Work Plan

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

b) **Accomplishment Report**

List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Coordinator and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews (internal or external) conducted by the Title VI Coordinator. List any major problem(s) identified and corrective action taken.

Include a summary and status report on any Title VI complaints filed with the Recipient.

## **Discrimination Complaint Procedure**

1. Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, the American with Disabilities Act of 1990, Section 504 of the Vocational Rehabilitation Act of 1973 and the Civil Rights Restoration Act of 1987, as amended, may file a complaint with the Recipient. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the Recipient's Title VI Specialist for review and action.
2. In order to have the complaint consideration under this procedure, the complainant must file the complaint no later than 180 days after:
  - a) The date of alleged act of discrimination; or
  - b) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

In either case, the Recipient or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

3. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the Recipient, the person shall be interviewed by the Title VI Coordinator. If necessary, the Title VI Coordinator will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled according to the Recipient's investigative procedures.
4. Within 10 days, the Title VI Coordinator will acknowledge receipt of the allegation, inform the complainant of action to take or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as WSDOT and USDOT.

5. The Recipient will advise WSDOT within 10 days of receipt of the allegations. Generally, the following information will be included in every notification to WSDOT:
  - a) Name, address, and phone number of the complainant.
  - b) Name(s) and address(s) of alleged discriminating official(s).
  - c) Basis of complaint (i.e., race, color, national origin or sex)
  - d) Date of alleged discriminatory act(s).
  - e) Date of complaint received by the recipient.
  - f) A statement of the complaint.
  - g) Other agencies (state, local or Federal) where the complaint has been filed.
  - h) An explanation of the actions the recipient has taken or proposed to resolve the issue raised in the complaint.
6. Within 60 days, the Title VI Coordinator will conduct an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the head of the Recipient. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.
7. Within 90 days of receipt of the complaint, the head of the Recipient will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with WSDOT, or USDOT, if they are dissatisfied with the final decision rendered by the Recipient. The Title VI Coordinator will also provide WSDOT with a copy of this decision and summary of findings upon completion of the investigation.
8. Contacts for the different Title VI administrative jurisdictions are as follows:

Washington State Department of Transportation  
Office of Equal Opportunity, Title VI Program  
310 Maple Park Ave., SE  
P.O. Box 47300  
Olympia, WA 98504-7300  
(360)705-7000

Federal Highway Administration  
Washington Division Office  
711 Capitol Way South, Suite 501  
Olympia, WA 98501  
(360) 534-9325

## Sanctions

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

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

**Washington State  
Department of  
Transportation**

**Kittitas County**

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**Signature**

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**Chief Executive Officer's Signature**

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**Title**

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**Title**

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**Date**

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**Date**

## **Appendix 1**

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

### **1. Compliance with Regulations**

The Contractor shall comply with the Regulations relative to non-discrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

### **2. Non-discrimination**

The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

### **3. Solicitations for Sub-contracts, Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.

### **4. Information and Reports**

The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the contracting agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to WSDOT or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.



## 5. Sanctions for Non-compliance

In the event of the Contractor's non-compliance with the non-discrimination provisions of this contract, the contracting agency shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- Withholding of payments to the Contractor under the contract until the contractor complies, and/or;
- Cancellation, termination, or suspension of the contract, in whole or in part

## 6. Incorporation of Provisions

The Contractor shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any sub-contractor or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request WSDOT enter into such litigation to protect the interests of the state and, in addition, the Contractor may request the USDOT enter into such litigation to protect the interests of the United States.

## Appendix 2

The following clauses shall be included in any and all deeds affecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

### GRANTING CLAUSE

NOW THEREFORE, Department of Transportation, as authorized by law, and upon the condition that the State of Washington will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal Aid for Highways and the policies and procedures prescribed by the United States Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, the Department of Transportation WSDOT (hereinafter referred to as the Regulations) pertaining to and

effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252: 42 USC 2000d to 2000d - 4) does hereby remise, release, quitclaim, and convey unto the State of Washington all the right, title, and interest of the Department of Transportation in and to said land described in Exhibit A attached hereto and made a part thereof.

#### HABENDUM CLAUSE

TO HAVE AND TO HOLD said lands and interests therein unto the State of Washington, 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 the federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits and shall be binding on the State of Washington, its successors, and assigns.

The State of Washington, 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 shall on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (,)(and)\* (2) that the State of Washington, shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, part 21, Non-discrimination of federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (,) and (3) that in the event of breach of any of the above mentioned non-discrimination conditions, the department shall have a right to reenter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.

### **Appendix 3**

The following clauses shall be included in all transportation related deeds, licenses, leases, permits, or similar instruments entered into by (Recipient) pursuant to the provisions of Assurance 8.

The LESSEE, for himself or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property

described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, part 21, Non-discrimination in federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulations may be amended.

That in the event of breach of any of the above non-discrimination covenants, the STATE shall have the right to terminate the lease, and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease has never been made or issued.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the Washington State Department of Transportation pursuant to the provisions of Assurance 8.

The LESSEE, or himself or herself, his or her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person, on the grounds of race, color, sex, or national origin, shall be excluded from participation in, be 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 furnishing of services thereon, no person on the grounds of race, color, sex, and national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, part 21, Non-discrimination in federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above non-discrimination covenants, the STATE shall have the right to terminate the lease, and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.