

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

**AGENDA DATE:** February 20, 2013

**ACTION REQUESTED:** Approve & Sign Non-Discrimination Agreement and Title VI Annual Accomplishment Update Report for 2012 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 2011 NDA and update report was signed by Alan Crankovich on January 18, 2012.

**INTERACTION:** Public Works

**RECOMMENDATION:** Move to Approve Board Chair signature on the Non-Discrimination Agreement and Title VI Annual Accomplishment Update Report for 2012

**HANDLING:** Return 2 signed originals to Public Works

**ATTACHMENTS:**

Non-Discrimination Agreement  
2012 Title VI Annual Accomplishment Update Report  
Resolution

**LEAD STAFF:**

Jan Ollivier, Public Works  
Transportation and Planning Manager

**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF KITTITAS  
STATE OF WASHINGTON**

**RESOLUTION NO: 2013-\_\_**

**RESOLUTION TO APPROVE THE NON-DISCRIMINATION AGREEMENT BETWEEN  
KITTITAS COUNTY AND FEDERAL HIGHWAY ADMINISTRATION AND THE TITLE  
VI ANNUAL ACCOMPLISHMENT UPDATE REPORT FOR 2012**

**WHEREAS,** 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 Washington State Department of Transportation (WSDOT) enter into a Non-Discrimination Agreement (NDA) with WSDOT; and

**WHEREAS,** The FHWA requires a new NDA be submitted if the chief executive officer has changed since the last NDA or update report; and

**WHEREAS,** The 2011 NDA and update report was signed by Alan Crankovich on January 18, 2012, who is no longer the Kittitas County Board of Commissioners chairman; and

**WHEREAS,** WSDOT requires an updated Title VI Annual Accomplishment Update Report because Kittitas County received federal funds during the 2012 reporting period; and

**NOW, THEREFORE BE IT RESOLVED:** The Kittitas County Board of County Commissioners hereby authorizes the chairman of the Board to sign the attached Non-Discrimination Agreement between Kittitas County and Washington State Department of Transportation and the Title VI Annual Accomplishment Update Report for 2012.

**ADOPTED** this 20<sup>th</sup> day of February, 2013

**BOARD OF COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON**

\_\_\_\_\_  
Obie O'Brien, Chairman

\_\_\_\_\_  
Paul Jewell, Vice-Chairman

\_\_\_\_\_  
Gary Berndt, Commissioner

**ATTEST:  
CLERK OF THE BOARD**

\_\_\_\_\_  
Julie A. Kjorsvik

Washington State Department of Transportation (WSDOT)

Recipient: Kittitas County

Reporting Year 2013

Reporting Period February 1, 2012 to January 31, 2013

As stipulated in this agency's Title VI Program Non-Discrimination Agreement, WSDOT's approval letter to that agreement, and WSDOT's Highways and Local Programs Local Agency Guidelines Manual (Chapter 28), the annual accomplishment and update report for the reporting period reflected above is hereby submitted.

Current Chief Executive Officer:

Name: Obie O'Brien

Title: Chairman of the Board, Kittitas County Board of Commissioners

Planning or Public Works Director:

Name: Kirk Holmes

Title: Public Works Director

Title VI Coordinator:

Name: Douglas D'Hondt

Title: County Engineer

**SUBMITTED by:**

\_\_\_\_\_  
Signature

Obie O'Brien

\_\_\_\_\_  
Typed / Printed Name

Chairman of the Board, Kittitas County Board of Commissioners

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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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.)
  - a. Report should identify the changes in the racial/gender composition of those persons involved in the transportation decision making, including planning and advisor staff.
  - b. 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:

2010 Census Modified Race Summary File Each Race Category Includes Hispanic or Latino Population							
	Total	White	Black	AIAN*	Asian	NHOPI**	Two or More Races
<b>Washington</b>	6,724,540	5,535,262	252,333	122,649	491,685	43,505	279,106
% of total pop.		82.3%	3.8%	1.8%	7.3%	0.6%	4.2%
<b>Kittitas</b>	40,915	38,054	394	440	840	59	712
% of total pop.		93.0%	1.0%	1.1%	2.1%	0.1%	1.7%

\*AIAN = American Indian and Alaska Native

\*\*NHOPI = Native Hawaiian and Other 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.

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There are only two local newspapers in Kittitas County. Kittitas County advertises its open houses and public meetings in both of these two newspapers. In 2012, outreach activities included:

- Annual Comprehensive Plan Amendment Open Houses and public hearings.
- Transportation Improvement Program and Annual Construction Program Open Houses.
- GMA Compliance public meetings.
- GMA Shoreline Master Program public meetings.
- Flood Control Zone District public meetings.
- Community Development Block Group Grant public meetings.

All open houses and public meetings are held in accessible locations. All population groups – including minority, women, low-income, and limited English proficiency population groups are encouraged to participate. Open houses and public meetings are held in both Upper County and Lower County, or the neighborhood where the project is taking place 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 or who have limited amount of time.

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.**

No special language services were requested for these activities.

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**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.)**

**c. Include dollar value of each**

<b>Description of Contract</b>	<b>Vendor</b>	<b>Amount of Contract</b>	<b>Date Signed</b>
2012 Petroleum & Lubricant	A-1	Varies on product	12/6/2011
2012 Petroleum & Lubricant	A-1 Distributing	Varies on product	12/6/2011
2012 Snow Blower Attachment	Norstar Industries	\$185,015.88	12/6/2011
2012 Petroleum & Lubricant	RE Powell	Varies on product	2/7/2012
2012 Gradall XL4100	Pape Machinery	\$354,294.00	4/3/2012
2012 Hyak Maintenance Shop	Hyak Maintenance	\$341,928.00	6/19/2012
2012 new bucket truck	Iron Technics	\$176,723.64	12/18/2012
Beacon Replacement scope of work	USKH	\$17,420.00	11/15/2011
Beacon Replacement project	Prater Electric	7,560.00	2/22/2012
Conveyance of beacon to museum	Kittitas Co. Hist. Museum	0	2/22/2012
2012 tie-down apron project	USKH	\$71,717	4/17/2012
Airport gate controllers	M2 Industrial	Varies by service	8/7/2012
2012 Airport apron improvements	Granite Construction	\$386,584.92	9/10/2012
Review draft FEMA DFIRMS	Sargent Engineers	\$7,497	12/27/2012
2012 Maintenance Rock Material	Ellensburg Cement	Varies on product	12/6/2011
2012 Asphalt Materials	Columbia Ready Mix	Varies on product	12/6/2011
2012 Crack Sealant Materials "A"	Special Asphalt Products	Varies on product	12/6/2011
2012 Crack Seal Machine Rental	Arrow Construction	Varies on product	12/6/2011
2012 Liquid Asphalt	Western Asphalt	Varies on product	12/6/2011
2012 Liquid Asphalt	Albina Asphalt	Varies on product	12/6/2011
Industrial Park Road Paving	Granite Construction	Varies on product	12/6/2011
2012 Weed Spray Materials	Helena	Varies on product	12/6/2011
Reecer Cr. & Lk Kachess sno-parks	WA. State Parks & Rec.	\$1,953.00	11/1/2011
2012 Drug & Alcohol Testing	Anovaworks	Varies	12/21/2011
Lick Creek Culvert Improvements	Sargent Engineers	\$42,853.00	1/19/2012
Musser Creek & Unnamed Tributary Culvert Improvements	Sargent Engineers	\$14,949.00	1/19/2012



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Corrosion Inhibited Liquid Mag Chloride	Roadwise	\$149.00 + tax per ton	2/7/2012
Non-Corrosion Inhibited Solid Sodaum Chloride	Bob Rankin	\$84.00 + tax per ton	2/7/2012
Environmental Archaeological on Teanaway & NF Teanaway	FHWA	0	12/6/2011
Hydraulics study	NW Hydraulic Consultants	0	12/20/2012
Manastash/Cove Rd Flood Relief	Sargent Engineers	\$11,312.00	1/30/2012
Manastash Bridge Assistance	Sargent Engineers	\$5,000.00	1/25/2012
Manastash Br. Backwater Analysis	Sargent Engineers	\$14,900.00	2/7/2012
Old Highway 10 Bridge Railing	KPFF	\$38,962.64	9/7/2012
On-Call Survey work	Cruse & Associates	Varies	4/3/2012
Interlocal Agreement Snoq. PUD	Snoq. Pass Utility District	Interlocal	4/17/2012
Salmon La Sac Rd Chip Seal project	FHWA	\$536,245.58	4/17/2012
Hanson Rd Repair Prof Services	Sargent Engineers	\$48,379.00	5/16/2012
2012 County Road Striping	Strip Rite	\$211,074.04	5/15/2012
Nelson Siding Rd Construction	MJ Hughes Construction	\$4,188,178.60	5/17/2012
McManamy Bridge, Environmental	WSDOT	\$5,000.00	2/2/2012
Prof. Service Contact Weed Spray County Roads	Woodland Resource Services	\$10,395.00	5/15/2012
Westside Rd ROW & Topographic Survey	Cruse & Associates	\$66,931.26	6/5/2012
Manastash Creek Corridor / Flood Hazard Reduction	KCCD	\$40,000.00	6/5/2012
Interlocal Agreement with Town of S. Cle Elum	Town of S. Cle Elum	Varies by project	7/17/2012
Westside Rd Engineering Services	Sargent Engineers	\$349,396.00	7/17/2012
Glover Rd /Parke Creek Br. Inspec.	Sargent Engineers	\$2,575.00	7/30/2012
PAM Cost Share	KCCD	\$5,000.00	8/7/2012
Cove Rd. Berm & Sediment Removal project	Sargent Engineers	\$3,605.00	9/18/2012
Lambert Bridge / Grade Control Structure	Sargent Engineers	\$9,432.00	9/20/2012
Nelson Siding Rd Safety Improvements	Sargent Engineers	\$11,134.00	7/20/2012
Load Rating Big Creek & Little Creek Bridges	Sargent Engineers	\$2,400.00	10/23/2012
Manastash Creek @ Cove Rd.	Sargent Engineers	\$4,976.00	11/20/2012

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

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

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

North Star Enterprises: 91-1451296	\$22,771.49	10/3/2012
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**f. Is there a Title VI Non-Discrimination statement included in all contracts and public notices?**

Yes

**g. 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:**

- h. How impacts were minimized/mitigated.**
- i. 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 2012 included:

- Striping county roads.
- Annual chip seal program - all County roads that are paved are chip sealed about once every seven years.
- Hard surface Fowler Creek Road.
- Flood emergency repair including Hanson Road, Cove Road Berm removal and dredging, Liberty Road Bank Scour repair, Cabin Creek Road mitigation,

Cooke Canyon Bridge restoration, and Lambert Road Bridge Streambank repair.

- Taylor Bridge fire repair including Bettas Road guardrail replacement and Hart Road restoration.
- Glover Road Bridge repair.
- Paving Bowers Field Industrial Park roads.
- Reconstruction of Nelson Siding Road including bridge replacements.
- Construction of the Hyak Maintenance Shop.
- Bowers Field Airport improvements including gates and apron.

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 in 2012 were:

- Kittitas Highway Safety Improvements.
- Westside Road Safety Improvements and Reconstruction.
- 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.
- McManamy Road Bridge Replacement.

6. If Right of Way has been acquired for a transportation project. Please describe:
- j. Identify the number of minority, low-income, elderly and disabled persons affected.
  - k. The efforts that were made to address Limited English Proficiency issues (including use and cost of translators, outreach efforts for each reported activity).
  - l. Describe any concerns raised by minorities and women regarding appraisals, negotiations, relocation assistance, and payments. What actions were taken to resolve those issues?

Three property owners provided construction easements in 2012 for the Nelson Siding Reconstruction project. Following is a description of each:

1. Douglas and Annette Calvisky, 2700 Nelson Siding Road
  - j. Not a minority person, low income person, elderly person, or disabled person.
  - k. No limited English proficiency issues needing translators or outreach.
  - l. No concerns raised by minorities and women regarding any part of the right of way process.
2. Robert Beam, parcel 20-14-29010-0021
  - j. Not a minority person, low income person, elderly person, or disabled person.
  - k. No limited English proficiency issues needing translators or outreach.

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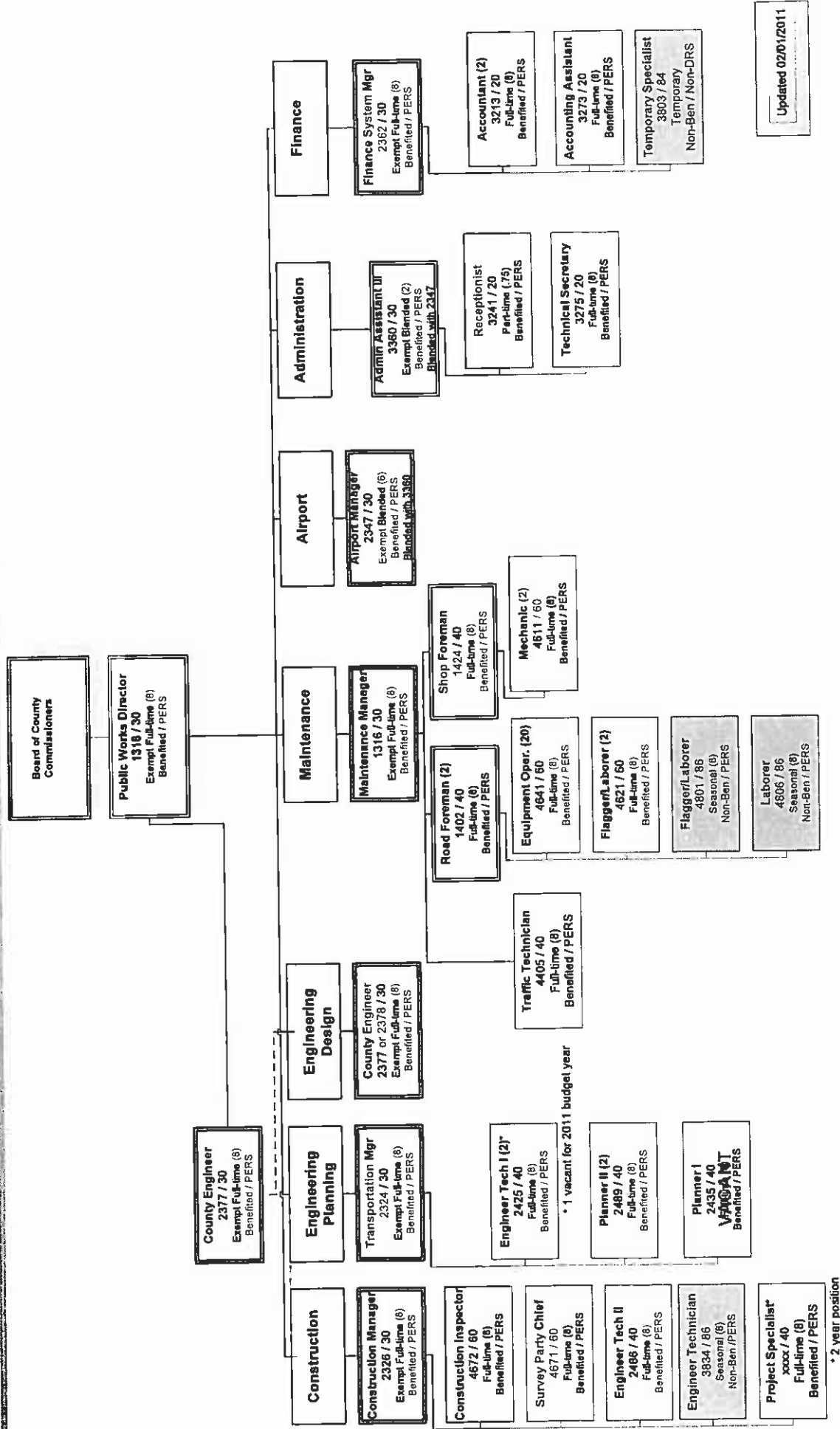
- l. No concerns raised by minorities and women regarding any part of the right of way process.
  - 3. Douglas and Kimilee Olver, parcel 20-14-27030-0004
    - j. Not a minority person, low income person, elderly person, or disabled person.
    - k. No limited English proficiency issues needing translators or outreach.
    - l. No concerns raised by minorities and women regarding any part of the right of way process.
- 7. List and describe any Title VI related complaints, as a result of transportation activities and projects. Include:
  - m. What was the allegation or concern?
  - n. Procedures used
  - o. Action taken
  - p. Resolution

No complaints were recorded in 2012.

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**Attachment A  
Public Works Organization Chart**

# 0106 – Public Works Department Organizational Chart



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>
Until further notice	6.9%
<u>Minorities - by Standard Metropolitan Statistical Area (SMSA)</u>	
Spokane, WA:	
SMSA Counties:	
Spokane, WA	2.8
WA Spokane.	
Non-SMSA Counties	3.0
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
WA Benton; WA Franklin.	
Non-SMSA Counties	3.6
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

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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).

**(May 7, 2012)**

***Disadvantaged Business Enterprise Condition of Award Participation***

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 apply to this Contract. Demonstrating compliance with these specifications is a Condition of Award (COA) of this Contract. Failure to comply with the requirements of this specification may result in your bid being found to be nonresponsive and may be rejected.

**DBE COA Goal**

The Contracting Agency has established a COA Contract goal in the amount of: five percent.

**DBE Eligibility/Selection of DBEs**

A Directory of Certified DBE Firms denoting the Description of Work the DBE Contractors are certified to perform is available at:

[www.omwbe.wa.gov/certification/index.shtml](http://www.omwbe.wa.gov/certification/index.shtml).

The directory provides plain language on the Description of Work that the listed DBE's have been certified by the Office of Minority and Women's Business Enterprises (OMWBE) to perform. The Bidder shall use the Directory of Certified DBE Firms to confirm if a DBE is certified for the "Description of Work" the Bidder lists on the DBE Utilization Certification form # 272-056 EF (see form instructions) and therefore qualifies for credit towards the COA goal.

**Crediting DBE Participation**

**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 shall be credited.

**DBE Prime Contractor**

A DBE Prime Contractor may only take credit for that portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work that the DBE Prime performs with its own forces.

**DBE Subcontractor**

When a DBE firm participates as a Subcontractor 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 shall be credited.

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- Include the cost of supplies and materials obtained by the DBE for the Work in the Contract including supplies purchased or equipment leased by the DBE.
  - However, you may not take credit for supplies, materials, and equipment the DBE Subcontractor purchases or leases from the Prime Contractor or its affiliate. In addition, Work performed by a DBE, utilizing resources of the Prime Contractor or its affiliates shall not be credited.
- 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 Office of Equal Opportunity (OEO).
- Count the entire value of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, managerial services, or for providing bonds or insurance.
- When a DBE subcontracts to another firm, the value of the subcontracted Work may be counted as participation only if the DBE's lower tier Subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm shall not be credited.
- When 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 credited as DBE participation, provided it is a distinct clearly defined portion of the Work that the DBE is certified to perform and the DBE Subcontractor performs the Work with its own forces.
- If a firm is not certified as a DBE at the time of the execution of the contract, their participation cannot be counted toward any DBE goals.

**Trucking**

Use the following factors in determining DBE credit and 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 credit is being claimed.
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 value of the transportation services it provides on the Contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs. For purposes of this requirement 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 provided it is with the consent of the DBE and the

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lease provides the DBE first priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

4. The DBE may lease trucks from another DBE firm including an owner-operator provided they are certified as a DBE for trucking. The DBE who leases trucks from another DBE may claim participation for the total value of the transportation services the lessee DBE provides on the Contract.
5. The DBE may also lease trucks from a non-DBE firm and may enter into an agreement with an owner-operator who is a non-DBE. The DBE shall only receive credit for the number of additional non-DBE trucks equal or less than the number of DBE trucks the firms owns or has leased/subcontracted through another DBE trucking company. The DBE must control the work of the non-DBE trucks. If the non-DBE is performing the work without supervision of that work by the DBE, the DBE is not performing a Commercially Useful Function (CUF).
6. In any lease or owner-operator situation, as described in requirement #4 and #5 above, the following rules shall apply:
  - a. A written lease/rental agreement is required for all trucks leased or rented; documenting the ownership and the terms of the agreement. The agreements must be submitted and approved by the Contracting Agency prior to the beginning of the Work. The agreement must show the leaser's name, truck description and agreed upon amount and method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. (This requirement does not apply to owner-operator arrangements.)
  - b. Only the vehicle, (not the operator) may be leased or rented. (This requirement does not apply to owner-operator arrangements).
7. Credit may only be claimed for DBE trucking firms operating under a subcontract or a written agreement approved by the Contracting Agency prior to performing Work.

**Expenditures paid to other DBEs**

Expenditures paid to other DBEs for materials or supplies may be counted toward DBE goals as provided in the following:

**Manufacturer**

You may claim DBE credit for 100 percent of value of the materials or supplies obtained from a DBE manufacturer.

A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment



required under the contract. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material or that purchases and substantially alters goods and materials to make them suitable for construction use before reselling them.

In order to receive credit as a DBE Manufacturer, the firm must be certified by OMWBE as a manufacturer in a NAICS code that falls within the 31XXXX to 33XXXX classification.

**Regular Dealer**

You may claim credit for 60 percent of the value of the materials or supplies purchased from a DBE regular dealer. Rules applicable to regular dealer status are contained in 49 CFR Part 26.55.e.2.

To be considered a regular dealer you must meet the following criteria:

- WSDOT considers and recognizes a regular dealer, as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract and described by the specifications of the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
- Sixty percent (60%) of the cost of materials or supplies purchased from an approved regular dealer may be credited as DBE participation.

Regular dealer status is granted on a contract-by-contract basis. A firm wishing to be approved as a regular dealer for WSDOT contracted projects or Highways & Local Program administered projects must submit a request in writing to OEO for approval, no later than seven days prior to bid opening.

Once the OEO has received the request, an onsite review will be set up with the firm and a review conducted to determine the firm's qualifications. If it is determined that the firm qualifies as a regular dealer the OEO will list the firm on an Approved Regular Dealers List. The list may be accessed through the OEO Home website is at:

[www.wsdot.wa.gov/equalopportunity](http://www.wsdot.wa.gov/equalopportunity).

**Note:** Requests to be listed as a regular dealer will only be processed if the requesting firm is certified by the Office of Minority and Women's Business Enterprises in a NAICS code that fall within the 42XXXX NAICS Wholesale code section.

**Materials or Supplies Purchased from a DBE**

With regard to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer you may claim credit for the following:

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1. Fees or commissions charged for assistance in the procurement of the materials and supplies.
2. Fees or transportation charges for the delivery of materials or supplies.

In either case you may not take credit for any part of the cost of the materials and supplies.

**Commercially Useful Function (CUF)**

The Prime Contractor has a responsibility and must treat the working relationship with the DBE such that the DBE is performing a commercially useful function. The Prime Contractor may only take credit for Work performed by a DBE that is determined to be performing a commercially useful function.

- A DBE performs a commercially useful function when it is responsible for execution of a distinct element of Work and is carrying out its responsibilities by performing, managing and supervising the Work involved. The DBE must also be responsible with respect to materials and supplies used on the Contract. For example; negotiating price, determining quality, determining quantities, ordering, installing (if applicable) and paying for the material itself.
- 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.

**Joint Checking Allowance**

Prime Contractors and DBEs must receive pre-approval by the OEO before using a joint check. Joint check requests shall be submitted by the Prime Contractor to the Contracting Agency for approval.

When requesting approval for use of a joint checking allowance, the Contractor must distribute a written joint check agreement among the parties (including the suppliers involved) providing full and prompt disclosure of the expected use of the joint checks. The agreement shall contain all the information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs. The joint check request shall be submitted to the Contracting Agency for approval prior to signing the contract agreement.

The following are some general conditions that must be met by all parties regarding joint check use:

- a. It is understood that the Prime Contractor acts solely as the guarantor of a joint check.
- b. The DBE's own funds are used to pay supplier of materials. The Prime Contractor does not make direct payment to supplier. In order to be

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performing a Commercially Useful Function (CUF), the DBE must release the check to the supplier (paying for the materials it-self and not be an extra participant in a transaction).

- c. If the Prime Contractor makes joint checks available to one DBE Subcontractor, the service must be made available to all Subcontractors (DBE and non-DBE).
- d. The relationship between the DBE and its suppliers should be established independently of and without interference by the Prime Contractor. The DBE has final decision-making responsibility concerning the procurement of materials and supplies, including which supplier to use.
- e. The Prime Contractor and DBE shall be able to provide receipts, invoices, cancelled checks and/or certification statements of payment if requested by the Contracting Agency.
- f. The DBE remains responsible for all other elements of 49 CFR 26.55(c)(1).

Failure by the Prime Contractor to request and receive prior approval of a joint check arrangement will result in the joint check amount not counting towards the Prime Contractor's DBE goal.

#### **Disadvantaged Business Enterprise Utilization Certification FORM # 272-056 EF**

To be eligible for award of the Contract, the Bidder shall properly complete and submit a Disadvantaged Business Enterprise Utilization Certification with the Bidder's sealed Bid Proposal, as specified Section 1-02.9 Delivery of Proposal. The Bidder's Disadvantaged Business Enterprise Utilization Certification must clearly demonstrate how the Bidder intends to meet the DBE COA goal. A Disadvantaged Business Enterprise Utilization Certification (form # 272-056 EF) is included in your Proposal package for this purpose as well as instructions on how to properly fill out the form.

In the event of arithmetic errors in completing the Disadvantaged Business Enterprise Utilization Certification the amount listed to be applied towards the goal for each DBE shall govern and the DBE total amount shall be adjusted accordingly.

**Note:** The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal submitted that does not contain a Disadvantaged Business Enterprise Utilization Certification that accurately demonstrates how the Bidder intends to meet the COA goal.

#### **Disadvantaged Business Enterprise (DBE) Written Confirmation Document(s) FORM # 422-031 EF**

The Bidder shall submit a complete and accurate Disadvantaged Business Enterprise (DBE) Written Confirmation Document for each DBE firm listed in the

Bidder's completed Disadvantaged Business Enterprise Utilization Certification as submitted with the bid. Failure to do so will result in the associated participation being disallowed, which may result in bid rejection.

A Disadvantaged Business Enterprise (DBE) Written Confirmation Document (form No. 422-031 EF) is included in your Proposal package for this purpose.

The form(s) shall be received as specified in the special provisions for Section 1-02.9 Delivery of Proposal.

It is prohibited for the Bidder to require a DBE to submit a Written Confirmation Document with any part of the form left blank. Should the Contracting Agency determine that a Written Confirmation Document was signed by a DBE that was not complete; the validity of the document comes into question and the associated DBE Participation may not receive credit.

**Selection of Successful Bidder/Good Faith Efforts (GFE)**

The successful Bidder shall be selected on the basis of having submitted the lowest responsive Bid, which demonstrates a good faith effort to achieve the DBE COA goal. Achieving the goal may be accomplished in one of two ways, as follows:

1. By meeting the goal  
The best indication of good faith efforts is to document, through submission of the Disadvantaged Business Enterprise Utilization Certification and supporting Disadvantaged Business Enterprise (DBE) Written Confirmation Document(s) that the Bidder has obtained enough DBE participation to meet or exceed the assigned DBE COA contract goal. That being the case no additional GFE documentation is required.  
Or;
2. By documentation that it made adequate GFE to meet the goal  
The Bidder may demonstrate a GFE in whole or part through GFE documentation ONLY IN THE EVENT a Bidder's efforts to solicit sufficient DBE participation have been unsuccessful. In this case, the Bidder must supply GFE documentation in addition to the Disadvantaged Business Enterprise Utilization Certification, and supporting Disadvantaged Business Enterprise (DBE) Written Confirmation document(s).

Note: In the case where the Bidder was awarded the contract based on demonstrating adequate GFE the advertised DBE goal will not be reduced to the Bidder's partial commitment. The Bidder shall demonstrate a GFE during the life of the Contract to attain the DBE Condition of Award (COA) Goal as assigned to the project.

**Good Faith Efforts (GFE) Documentation**

GFE documentation shall be received, as specified in the special provisions for Section 1-02.9 Delivery of Proposal.

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Based upon all the relevant documentation submitted in Bid or as supplement to Bid, the Contracting Agency shall determine whether the Bidder has demonstrated a sufficient GFE to achieve DBE participation. The Contracting Agency will make a fair and reasonable judgment of whether a Bidder that did not meet the goal through participation, made adequate good faith efforts as demonstrated by the GFE documentation.

The following is a list of types of actions, which would be considered as part of the Bidder's GFE to achieve DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

1. Attendance by the Bidder at any pre-solicitation or pre-Bid meetings that were scheduled by the Contracting Agency to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
2. Contacting local Tribes, Tribal Employment Rights Offices (TERO) concerning the subcontracting or supply opportunities in sufficient time to allow the enterprises to participate effectively;
3. Selection by the Bidder of specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs even if the Bidder preferred to perform these Work items as the Prime Contractor;
4. Advertising by the Bidder in general circulation, trade association minority and trade oriented, women focus publications, concerning the subcontracting or supply opportunities;
5. Providing written notice from the Bidder to a reasonable number of specific DBEs, identified from the OMWBE Directory of Certified DBE Firms for the selected subcontracting or material supply Work, in sufficient time to allow the enterprises to participate effectively;
6. Follow-up by the Bidder of initial solicitations of interest by contacting the DBEs to determine with certainty whether they were interested. Documentation of this kind of action shall include the information outlined below:
  - a. The names, addresses, telephone numbers of DBEs who were contacted, the dates of initial contact, and whether initial solicitations of interest were followed-up by contacting the DBEs to determine with certainty whether the DBEs were interested;
  - b. A description of the information provided to the DBEs regarding the plans, specifications, and estimated quantities for portions of the Work to be performed;

- c. Documentation of each DBE contacted but rejected and the reason(s) for that rejection;
7. Providing, to interested DBEs, adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply Work;
8. Negotiating in good faith with the DBE firms, and not, without justifiable reason, rejecting as unsatisfactory, Bids that are prepared by any DBE. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations - union vs. non-union employee status - are not legitimate causes for the rejection or non-solicitation of bids in the Prime Contractor's efforts to meet the project goal;
9. Advertising and making efforts to obtain DBE participation that were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Contracting Agency;
10. Making any other efforts to obtain DBE participation that were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Contracting Agency;
11. Using the services of minority community organizations, minority contractor groups, local, State, and federal minority business assistance offices and other organizations identified by WSDOT and advocates for disadvantaged, minority, and women businesses that provide assistance in the recruitment and placement of disadvantaged, minority, and women business enterprises; and
12. Using the WSDOT OEO DBE Supportive Services to assist you. For more information please contact the OEO by calling toll free at (888) 259-9143 or emailing [dbess@wsdot.wa.gov](mailto:dbess@wsdot.wa.gov).

**Administrative Reconsideration of GFE Documentation**

Any Bidder has the right to reconsideration but only for the purpose of reassessing their GFE documentation that was determined to be inadequate.

- The Bidder must request and schedule a reconsideration hearing within seven calendar days of notification of being nonresponsive or forfeit the right to reconsideration.
- The reconsideration decision on the adequacy of the Bidder's GFE documentation shall be made by an official who did not take part in the original determination.
- The Bidder shall have the opportunity to meet in person with the official for the purpose of setting forth the Bidder's position as to why the GFE documentation demonstrates a sufficient effort.

- The reconsideration official shall provide the Bidder with a written decision on reconsideration within five business days of the hearing explaining the basis for their finding.

**Procedures between Award and Execution**

After Award and prior to Execution the Bidder shall provide the additional information described below. Failure to comply shall result in the forfeiture of the Bidder's Proposal bond or deposit.

1. Additional information for all successful DBE's as shown on the Disadvantaged Business Enterprise Utilization Certification:
  - a. Correct business name, federal employee identification number (if available), and mailing address.
  - b. List of all Bid items assigned to each successful DBE firm, including unit prices and extensions.
  - c. Description of partial items (if any) to be sublet to each successful DBE firm specifying the distinct elements of Work under each item to be performed by the DBE and including the dollar value of the DBE portion.

Total amounts shown for each DBE shall not be less than the amount shown on the Disadvantaged Business Enterprise Utilization Certification. A breakdown that does not conform to the Disadvantaged Business Enterprise Utilization Certification or that demonstrates a lesser amount of DBE participation than that included in the Disadvantaged Business Enterprise Utilization Certification will be returned for correction.

2. 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 business name and a mailing address.

Note: The firms identified by the Prime Contractor may be contacted by the Contracting Agency to solicit general information as follows: age of the firm and average of its gross annual receipts over the past three-years.

**Procedures after Execution**

**Crediting DBE Participation toward Meeting the Goal**

**Reporting**

All DBE work whether COA or race neutral participation is reported. The Prime Contractor shall submit a Quarterly Report of Amounts Credited as DBE Participation form (422-102 EF) on a quarterly basis for any calendar quarter in which DBE has accomplished Work or upon completion of the project, as appropriate. The dollars are to be reported as specified herein.

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.

#### **Changes in DBE COA participation**

##### **Owner initiated Change Orders**

The Prime Contractor shall demonstrate a GFE to substitute COA DBE participation when the Contracting Agency deletes Work items by change order that impact a COA DBE's Work.

When the Contract allows alternate Work methods which serve to delete or create under-runs in COA DBE Work then the Prime Contractor must provide documentation of negotiating the change with the DBE that was to perform the reduced Work and demonstrate a GFE to substitute other DBE COA participation.

##### **Original Quantity Under runs**

In the event that Work committed to a DBE firm as part of the COA under runs the original planned quantities the Prime Contractor shall demonstrate a GFE to substitute other DBE COA participation.

##### **Contractor-Initiated Proposals—General**

The Contractor cannot reduce the amount of work committed to a DBE firm at contract award without good cause and only with written concurrence from the OEO. Reducing a COA DBE's Work is viewed as a partial DBE termination, subject to the procedures below.

##### **DBE Termination**

A COA DBE Subcontractor may only be terminated in whole or part with the approval of the Contracting Agency (in coordination with OEO). Approval will be granted provided the Prime Contractor demonstrates that the termination is based on good cause.

Good cause typically includes situations where the DBE Subcontractor is unable or has failed to perform the work of its subcontract in accordance with normal industry standards. While not all inclusive, some examples of good cause include the following circumstances:

Good cause may exist if:

- The listed DBE Subcontractor fails or refuses to execute a written contract.
- The listed DBE Subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.



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- The listed DBE Subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The listed DBE Subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.
- The listed DBE Subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
- The listed DBE is ineligible to receive DBE credit for the type of work required.
- A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its work on the contract.

Good cause does not exist if:

- The Prime Contractor seeks to terminate a COA DBE so that the Prime can self-perform the Work.
- The Prime Contractor seeks to terminate a COA DBE so the Prime Contractor can substitute another DBE or non-DBE after contract award.
- The failure or refusal of the DBE Subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor (e.g., the failure of the Prime Contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's Work).

Prior to requesting termination, the Prime Contractor must give notice in writing to the DBE Subcontractor with a copy to the Contracting Agency of its intent to request to terminate DBE work and the reasons for doing so. The DBE Subcontractor shall have five (5) days to respond to the prime Contractor's notice. The DBE's response shall either support the termination or advise the Contracting Agency and the Prime Contractor of the reasons it objects to the termination of its subcontract.

**Decertification**

When a DBE is performing as a COA in any capacity and the DBE becomes decertified during the course of the Work for reasons other than graduation, the portion of the Work performed after the decertification shall not be

credited and the Contractor is obligated to make a good faith effort to substitute other DBE participation to meet the goal.

**Counting payments**

Payments to a DBE firm will count toward DBE goals only if the participation is in accordance with these specifications.

**Prompt Payment**

Prompt payment to all Subcontractors shall be in accordance with Section 1-08.1(1) of these Contract special provisions.

**Payment**

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

**Damages for Noncompliance**

The Prime Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Prime Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Contracts, which contain funding assistance from the United States Department of Transportation. Failure by the Prime Contractor to carry out these requirements is a material breach of this Contract, which may result in the Termination of this Contract or such other remedy as the Contracting Agency deems appropriate.

If the Prime Contractor does not comply with any part of its Contract as required under 49 CFR part 26, and/or any other applicable law or regulation regarding DBE, the Contracting Agency may withhold payment, suspend the ability of the Prime Contractor to participate in future Contracting Agency contracts, impose sanctions or Terminate the Contract, and subject the Prime Contractor to civil penalties of up to ten percent of the amount of the Contract for each violation. In the case of WSDOT Contracts, prequalification may be suspended pursuant to WAC 468-16-180, and continuous violations (exceeding a single violation) may also disqualify the Prime Contractor from further participation in WSDOT Contracts for a period of up to three years.

An apparent low Bidder must be in compliance with these Contract Provisions as a condition precedent to the granting of a notice of award by the Contracting Agency. The Prime Contractor is entitled to request an adjudicative proceeding with respect to the Contracting Agency's determination of Contract violation and assessed penalties by filing a written application within thirty days of receipt of notification. The adjudicative proceeding, if requested, will be conducted by an administrative law judge pursuant to the procedures set forth in RCW 34.05 and Chapter 10.08 of the Washington Administrative Code.

## **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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Obie O'Brien, 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 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.