A-2017-10

**2017 Non-Discrimination Agreement**
**Population Under 100,000**

# Washington State Department of Transportation and

# Pend Oreille County

(Name of Recipient)

# Policy Statement

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

The Civil Rights Restoration Act of 1987, broadened 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 **Pend Oreille County**, is responsible for initiating and monitoring Title VI activities, preparing reports and other responsibilities as required by 23 Code of Federal Regulations (CFR) 200 and 49 Code of Federal Regulation 21.

**Chief Executive Officer's (CEO) Signature**

**Karen Skoog**
CEO's Typed/Printed Name

Title
**Chair, Board of County Commissioners**

2/7/17
Date

OEO: NDA Form (2010-11-01)

## Title VI Program
### *Organization and Staffing*

Pursuant to 23 CFR 200, the Recipient has designated a Title VI Coordinator who is responsible for **Attachment 1**, which describes the hierarchy for the 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, or 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:

    - List all major Transportation programs and activities of the Recipient and Title VI responsibilities for each one of them. Include information as **Attachment 2** to this Nondiscrimination Agreement.

2. That it will promptly take any measures necessary to effectuate this agreement.

3. That each Transportation program, activity, and facility (i.e., lands change to roadways, park and ride lots, etc.) 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 Regulation, 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 causal 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. Attend training programs on Title VI and related statues 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 one year 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 conclusion of any special reviews (internal or external) conducted by the Title VI Coordinator. List any major problem(s) identified and correction 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 Coordinator for review and action.
2. In order to have the complaint consideration under this procedure, the complainant must file the compliant no later than 180 days after:

   a) The date of the alleged act of discrimination; or

b) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

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

3. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the Recipient, the person shall be interviewed by the Title VI Coordinator. If necessary, the Title VI Coordinator will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled according to the Recipient's investigative procedures.

4. Within 10 days, the Title VI Coordinator will acknowledge receipt of the allegation, inform the complainant of action take or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as WSDOT or 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(es) 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:

   Eastern Washington:
   Washington State Department of Transportation
   Office of Equal Opportunity, Title VI Program
   2714 North Mayfair Street
   Spokane, WA 99207-2090
   (509) 324-6018

   Western Washington:

   Washington State Department of Transportation
   Office of Equal Opportunity, Title VI Program
   P.O. Box 47314
   Olympia, WA 98504-7314
   (360) 705-7089

   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**

_____
Signature

_____
Title

_____
Date

**NAME OF RECIPIENT: Pend Oreille County**

_____
Chief Executive Officer's Signature

Chair, Board of County Commissioners
Title

2-7-17
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 or 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 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-contract 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, of 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, or national origin shall be excluded from participation in, denied the benefits or, 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.

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1 Reverter Clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.