March 1, 2011

TO: Commissioners, Director and Deputy Directors

FROM: Ryan Head, Transportation Funding Coordinator

SUBJECT: Key No. 12368, Franklin Road, Black Cat Road to Ten Mile Road Project State/Local Agreement (SLA) with the Idaho Transportation Department
Staff Memo for March 9, 2011 Commission Meeting – Consent Agenda

Executive Summary
This SLA sets out the responsibilities of the parties in the development phase of the Franklin Rd, Black Cat Rd to Ten Mile Rd project. Project design will begin in FY2011 with construction currently programmed in FY2017. The Agreement must be signed before $550,000 in design funds can be obligated for the project. A separate SLA for construction of the projects will return to the Commission by FY2016.

Facts & Findings
This project will widen Franklin Road from two (2) lanes to five (5) lanes from Black Cat Road to Ten Mile Road. Work includes curb, gutter, sidewalks and bicycle lanes in order to increase capacity along a designated Interstate 84 ITS Detour Route. Design and right-of-way for this project will take place concurrent with the Franklin Rd and Black Cat Rd Intersection project to take advantage of work and cost efficiencies. Construction, however, is programmed in separate years due to limitations in Federal funding. Efforts will continue to move right-of-way and construction years up where possible.

Fiscal Implications
Funding is through the Surface Transportation Program – Transportation Management Area (STP-TMA). STP funding requires a 7.34% local match.

<table>
<thead>
<tr>
<th>Phase</th>
<th>Total Funding</th>
<th>Required Match</th>
<th>ACHD Budget Year for Match</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concept/Design</td>
<td>$550,000</td>
<td>$41,000</td>
<td>FY2011, FY2012</td>
</tr>
<tr>
<td>Right-of-Way</td>
<td>$1,105,000</td>
<td>$81,000</td>
<td>FY2014</td>
</tr>
<tr>
<td>Construction – 1st Year</td>
<td>$4,758,000</td>
<td>$2,424,000</td>
<td>FY2016 (Includes Match for 2nd Year and Advance Construct)</td>
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<tr>
<td>Construction – 2nd Year</td>
<td>$1,933,000</td>
<td>-$1,933,000</td>
<td>FY2017 – Reimbursement of Advance Construct Funds</td>
</tr>
<tr>
<td>Total</td>
<td>$8,346,000</td>
<td>$613,000</td>
<td></td>
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</tbody>
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Only concept and design is included in this State and Local Agreement. ACHD is responsible for paying out the full cost of design and will be reimbursed up to 92.66%. Right of way acquisition for the project is scheduled for FY2014 and construction for FY2016-2017. An advance of construction funds is currently estimated at approximately $1.933M and is being scheduled in the FY2012-2016 Five Year Work Plan for FY2016 with reimbursement in FY2017 (PD). Efforts will continue to eliminate or reduce the advance construct. The terms of the Advance Construct will be set forth as part of the Construction SLA.

Once Federal funds are expended, if the project does not move forward to completion, ACHD would be responsible for repayment of those funds.

Policy Implications
This project, in connection with the intersection widening at Franklin Rd and Black Cat Rd, will bring to substantial completion ACHD’s planned investment into the Franklin Road corridor. Nampa is making further investment on the Canyon County side with plans to expand the Franklin Rd and Star Rd intersection.

By signing this agreement, it continues ACHD policy of seeking outside funding sources to supplement general funds.

Alternatives
1. Approve the State/Local Agreement between ACHD and ITD.
2. Reject the agreement and direct staff to renegotiate the terms of this agreement with ITD.

Recommendation
Approve the State/Local Agreement between ACHD and ITD. Authorize Commission President to sign the Agreement.

Attachment(s): SLA for the Franklin Rd, Black Cat Rd to Ten Mile Rd project.

CC: Project File, Planning and Projects Files, Central File
STATE/LOCAL AGREEMENT
(PROJECT DEVELOPMENT)
PROJECT NO. A012(368)
FRANKLIN RD; BLACK CAT TO TEN MILE
ADA COUNTY
KEY NO. 12368

PARTIES

THIS AGREEMENT is made and entered into this ______ day of ___________, ______, by and between the IDAHO TRANSPORTATION DEPARTMENT, hereafter called the STATE, and the ADA COUNTY HIGHWAY DISTRICT, acting by and through its Board of Commissioners, hereafter called the SPONSOR.

PURPOSE

The SPONSOR has requested the STATE to program for development and construction Federal-Aid Project A012(368), described as Franklin Rd; Black Cat to Ten Mile, the project development for which is to be performed by SPONSOR'S staff/Consultant Engineers. The purpose of this Agreement is to set out the terms and conditions to accomplish the project development phase of this project.

NOTE: Securing the services of a consultant for project development services must follow the process outlined in the Idaho Transportation Department Guidelines for Local Public Agency Projects.

Since certain functions under this Agreement are to be performed by the STATE, requiring the expenditure of funds, and since the STATE can only pay for work associated with the State Highway System, the SPONSOR is fully responsible for all costs incurred by the STATE related to the project.

Authority for this Agreement is established by Section 40-317 of the Idaho Code.

The Parties agree as follows:
SECTION I. GENERAL

1. It is necessary to develop construction plans and specifications in order that federal participation may be obtained in the construction costs of the project. Federal-aid for project development is available on this project.

2. Federal participation in the project is at the rate of 92.66%; local participation is 7.34%. Scheduled funding for this project is listed on the Idaho Transportation Department approved Capital Investment Program, and subsequent revisions. Current estimated funding is as follows:
   a. Project Development (State, Consultant, Local) - $550,000
   b. Right-of-Way - $0-
   c. Utilities - $0-
   d. Construction Engineering - $0-
   e. Construction and Traffic Materials - $7,421,000
   f. Total Estimated Project Costs - $7,971,000

3. The **SPONSOR**'S match for this project will be provided for in cash or in-kind services. The value of all in-kind services must be approved on form ITD-2395, Request for Federal-aid on No Bid Items of Work (Force Account).

4. The construction year for this project is listed on the approved Highway Development Program, and subsequent revisions. Currently the project is not scheduled for construction. The **SPONSOR** will meet the project milestones shown below or on a subsequently approved CPM Schedule. Failure to meet these milestones may jeopardize availability of Federal participation.

   Concept Report Approval - February 2012
   Environmental Evaluation Approval - October 2012
   PS&E Submittal - March 2015
5. This project shall be designed to State Standards as defined in the current version of the Idaho Transportation Department’s Design Manual, or as subsequently revised. The current version of the Design Manual can be viewed at the following website: http://itd.idaho.gov/manuals/ManualsOnline.htm.

6. All information, regulatory and warning signs, pavement or other markings, and traffic signals required and warranted will be developed as a part of the plans, regardless of whether the work is done as a portion of the contract or by the SPONSOR'S forces.

7. If the project is terminated prior to completion, the SPONSOR shall repay to the STATE all federal funds received for the project, and shall be liable to the STATE for any un-reimbursed incidental expenses as provided for in Section II, Paragraph 1 of this Agreement.

8. Sufficient Appropriation. It is understood and agreed that the STATE is a governmental agency, and this Agreement shall in no way be construed so as to bind or obligate the STATE beyond the term of any particular appropriation of funds by the Federal Government or the State Legislature as may exist from time to time. The STATE reserves the right to terminate this Agreement if, in its sole judgment, the Federal Government or the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the STATE to continue payments. Any such termination shall take effect immediately upon notice and be otherwise effective as provided in this Agreement.

SECTION II. That the STATE shall:

1. Provide the following services incidental to the project development:

   a. Assist SPONSOR in the selection of a Consulting Engineer and negotiations as needed, and furnish the Agreement for Engineering Services and any supplements thereto, to be used between the SPONSOR and Consultant Engineers on this project.
b. Review Preliminary Environmental Evaluation and recommend other appropriate environmental documentation.

c. Furnish to the Engineers copies of materials test reports and other data applying to the project and available to the STATE.

d. Advertise for any/all required formal public hearings and provide a hearing officer to conduct the hearings.

e. Review rights-of-way appraisals and assign personnel to determine relocation entitlements and assistance which might be required by the project.

f. File with the Federal Highway Administration applications for exceptions to AASHTO Standards when appropriate and for government land withdrawals for rights-of-way and airport clearance.

g. Assist in negotiations with public carriers and utilities for agreements on behalf of the SPONSOR. If requested by a utility company, hold utility hearings before the Idaho Transportation Board or issue IT Board Orders to the utilities on behalf of the SPONSOR. During development, the latest edition of the STATE's Guide for Utility Management will be followed in all matters relating to utilities.

h. Review the designing engineers' plans, estimates, reports and environmental studies, and issue notice of approval to the SPONSOR and the Engineer following the Concept, Preliminary and Final Design Reviews and the Design Study Report.

i. Supply roadway summary sheets and such standard drawings as may be required to supplement the plans.

j. Print and assemble plans, special provisions, specifications and contract.
k. Advertise for bids and let the construction contract. Prior to construction, the parties will enter into a separate agreement covering responsibilities of the parties relating to construction.

2. Upon receipt of appropriate documentation from the SPONSOR showing expenditure of funds for project development, reimburse the SPONSOR at the approved Federal-aid rate for eligible expenses. Checks shall be made payable to the "Ada County Highway District", and mailed to the Accounting Office at 3775 Adams Street, Garden City, ID 83714.

3. Bill the SPONSOR for costs incurred by the STATE under this Agreement for project development, if those costs exceed the amount set out in Section III, Paragraph 1.

4. Bill the SPONSOR for any federal funds to be repaid by the SPONSOR if the project is terminated prior to completion, and the SPONSOR has been reimbursed with federal funds for preliminary engineering.

SECTION III. That the SPONSOR shall:

1. Pay to the STATE, before the STATE begins the incidental services referred to in Section II, Paragraph 1, the sum of TEN THOUSAND DOLLARS ($10,000.00), estimated to be the total expense to the STATE. In addition, pay to the STATE the cost of all incidental services provided by the STATE upon receipt of the billing provided for in Section II, Paragraph 3. Checks shall be made payable to the "Idaho Transportation Department", and mailed to the District Three Office at PO Box 8028, Boise, ID 83707-2028.

2. SPONSOR warrants that it will repay any federal reimbursements on this project if the project is terminated prior to completion.

3. With the assistance of the STATE, hire a consultant for development of the project.
4. Make timely payment of all consultant invoices throughout the design of the project. Periodically the SPONSOR may submit allowable Consultant invoices and receipts to the STATE showing payment of same for reimbursement. The STATE will reimburse the SPONSOR for eligible expenses less the SPONSOR's match.

5. Acquire with the STATE'S assistance as noted in Section II, all rights-of-way and easements needed to provide for construction and maintenance of the project.

6. Furnish all appraisals required for the project to the STATE for review.

7. Review the appraisal reviewer's statement of the estimated fair market value and approve an amount to be just compensation for each parcel to be acquired.

8. Complete a monthly right-of-way status report, ITD-2161, and forward it to the Local Project Coordinator.

9. Before initiating negotiations for any real property required for right-of-way, establish an amount considered to be just compensation, under Idaho law, and make a prompt offer to acquire the property for the full amount established.

10. Make a good faith effort to acquire the real property by negotiation.

11. Inform the property owner, in those cases where he indicates a willingness to donate a portion of his real property for rights-of-way, of all the facts including his right to full compensation in money for land and damages, if any, in accordance with Idaho Code.

12. Provide relocation assistance and payments for any displaced person, business, farm operation, or nonprofit organization in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; 49 CFR 24; 23 CFR 710; the Idaho Real Property Acquisition Act of 1971; Title 40, Chapter 20; and Title 58, Chapter 11; Idaho Code, as
amended, and regulations promulgated thereunder. No individual or family shall be displaced until decent, safe and sanitary replacement housing is available to the relocatees for immediate occupancy. In addition, advise the STATE of any relocations required by the project and authorize the STATE to negotiate in its behalf for all relocation assistance and payments, the cost of which will be assumed by the SPONSOR at the time of negotiation.

13. To the greatest extent practicable, no person lawfully occupying the real property shall be required to move from his home, farm or business without at least ninety (90) days' written notice prior to advertisement of the project.

14. Before advertisement for bids, provide a certification that all rights-of-way, easements, permits, materials sources and agreements necessary for the construction of the project have been acquired in accordance with the provisions of this Section. Provide a value of any right-of-way donations obtained, which may be credited as a matching share.

15. Evaluate the impact the project might have on the quality of the human environment and prepare and furnish to the STATE an environmental evaluation, which includes cultural resources, and any other documents required by the National Environmental Policy Act.

16. At all required public hearings, furnish all necessary exhibits and provide for representative of the SPONSOR to describe the project; present information about the location and design, including alternates; discuss the tentative schedules for rights-of-way acquisitions and construction; discuss SPONSOR'S relocation assistance program; discuss the economic, sociological, and environmental effects of the project; and answer all questions concerning the project.

17. Comply with Appendix A, Title 49 CFR, Part 21, attached hereto and made a part hereof. By this agreement SPONSOR agrees to comply with and be bound to the Civil Rights provisions of Title VI of the Federal Code and to generally insert those provisions.
in all contracts that it enters into that are federally funded on this project. If property acquired for this project with Federal financial assistance is transferred, the recipient of the property will be subject to Appendix A if the property is used for the same purpose it was originally acquired or for another purpose involving similar services or benefits to the general public. SPONSOR should contact the STATE prior to disposing of any property acquired under this agreement.

18. Maintain all project records, including source documentation for all expenditures and in-kind contributions, for a period of three (3) years from the date of final acceptance. If any litigation, claim, negotiation, or audit has been started before expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues that arise from it.

19. Comply with all other applicable State and Federal regulations.
EXECUTION

This Agreement is executed for the STATE by its Assistant Chief Engineer (Development), and executed for the SPONSOR by the President, attested to by the Director, with the imprinted corporate seal of the ADA COUNTY HIGHWAY DISTRICT.

IDAHO TRANSPORTATION DEPARTMENT

APPROVED BY:

________________________________________
Assistant Chief Engineer
(Development)

RECOMMENDED BY:

________________________________________
Roadway Design Engineer

Approved as to form
Tim Thomas
Deputy Attorney General
October 14, 2010

ATTEST:

________________________________________
Director
(SEAL)

By regular/special meeting
on ____________________.

ADA COUNTY HIGHWAY DISTRICT
BOARD OF COMMISSIONERS

________________________________________
President
APPENDIX A

Non-Discrimination Agreement for Local Public Agencies

Title VI Program

Organization and Staffing

Pursuant to 23 CFR 200, the Sponsor has designated a Title VI Coordinator who is responsible for monitoring practices, procedures, policies, and documents for compliance with Title VI. This individual is the designated liaison for Title VI program activities and for coordinating compliance monitoring with the Idaho Transportation Department Equal Employment Opportunity Office.

Assurances of Non-Discrimination

49 CFR Part 21.7

The Sponsor hereby gives assurances:

1. That no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the Sponsor regardless of whether those programs and activities are Federally funded or not. The Federal-aid Highway Transportation Act of 1973 added sex to the list of prohibitive factors. Disability was added through Section 504 of the Rehabilitation Act of 1973. Age was subsequently added in 1975 under the Age Discrimination Act. Minority populations and low-income populations were added by Presidential Executive Order 12898. Limited English proficient persons was added by Presidential Executive Order 13166.

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

3. That each 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.

Further assurance is given that the Sponsor will comply with all requirements of Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Vocational Rehabilitation Act of 1973. Public agencies are required to have completed a self-evaluation of all their programs and services (including pedestrian facilities) by 1992. In addition, public agencies with 50 or more employees were required to develop an ADA Transition Plan describing in detail how corrections would be made. If corrections could not be made within one year (or 1993), the Plan was to include a detailed schedule of how corrections would be made (CFR 28 35.105 & 35.150).

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 Sponsor by the Idaho Transportation Department (ITD) under the Federally-Funded Program and is binding on it, other recipients, sub-grantees, contractors, sub-contractors, transferees, successors in interest and other participants.

5. That the Sponsor 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 (Sponsor), 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

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opportunity to submit bids in response to this invitation and will not be discriminated against on the
grounds of race, color, national origin, sex, or disability in consideration for an award.

6. That the Sponsor shall insert the clauses of Attachment 1 of this Agreement in every contract subject to
the Act and the Regulations.

7. That the Sponsor shall insert the clauses of Attachment 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. The Sponsor 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 Sponsor’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 Sponsor, or in recognition of the public interest to be
served by such sale or lease to the Sponsor, and
5. any Federal agreement, arrangement, or other contract which has as one of its purposes, the provision of
assistance.

The Sponsor shall:
1. Issue a policy statement, signed by the Sponsor’s authorized representative, which expresses its
commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated
throughout the Sponsor’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 ITD 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 Sponsor’s authorized representative shall be
held responsible for implementing Title VI requirements.

3. Designate a Title VI Coordinator who has a responsible position in the organization and easy access to the
Sponsor’s authorized representative. The Title VI Coordinator shall be responsible for initiating and
monitoring Title VI activities and preparing required reports.

4. 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, sex, or disability; 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 Sponsor’s report of investigation, will be forwarded to ITD’s EEO Office – External Programs within
10 days of the date the complaint was received by the Sponsor.

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6. Collect statistical data (race and sex) of participants in, and beneficiaries of the Transportation programs and activities conducted by the Sponsor.

7. Conduct Title VI reviews of the Sponsor 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 statutes conducted by ITD’s EEO Office.

9. Participate in an annual review of the Sponsor’s Title VI Program, the purpose of which is to determine to what extent the Sponsor has complied with Title VI requirements including the ADA. This review is conducted one year from the date of approval of the Non-Discrimination Agreement and then annually on the same date. The format for the Title VI review will be provided each year to the Sponsor for completion. A determination of compliance will be made by ITD’s EEO Office based on the information supplied in the review. This review of the Sponsor’s Title VI Program may also include an on-site review in order to determine compliance.

**Discrimination Complaint Procedure**

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 Sponsor. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the Sponsor’s Title VI Coordinator for review and action.

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 Sponsor 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.

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 Sponsor, 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 Sponsor’s investigative procedures.

Within 10 days, the Title VI Coordinator will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as ITD and USDOT.

The Sponsor will advise ITD within 10 days of receipt of the allegations. Generally, the following information will be included in every notification to ITD:

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 Sponsor.
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 Sponsor has taken or proposed to resolve the issue raised in the complaint.

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 Sponsor’s authorized representative. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.

Within 90 days of receipt of the complaint, the Sponsor’s authorized representative 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 ITD, or USDOT, if they are dissatisfied with the final decision rendered by the Sponsor. The Title VI Coordinator will also provide ITD with a copy of this decision and summary of findings upon completion of the investigation.

Contacts for the different Title VI administrative jurisdictions are as follows:

Idaho Transportation Department  
Equal Employment Opportunity Office – External Programs  
EEO Manager  
PO Box 7129  
Boise, ID 83707-1129  
208-334-8852

Federal Highway Administration  
Idaho Division Office  
3050 Lakeharbor Lane, Suite 126  
Boise, ID 83703  
208-334-9180

Sanctions
In the event the Sponsor fails or refuses to comply with the terms of this agreement, the ITD 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 Sponsor under the program from which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Sponsor.
3. Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the Sponsor;
4. Refer the case to the Department of Justice for appropriate legal proceedings.

Distribution:  EEO Office  
Appendix A revised: 03-09, 08-10
Attachment 1

This Attachment is to be inserted in every contract subject to Title VI of the Civil Rights Act of 1964 and associated Regulations.

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 ITD 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

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 ITD 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.
Attachment 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 Idaho 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, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation ITD (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 Idaho 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 Idaho, 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 Idaho, its successors, and assigns.

The state of Idaho, 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 Idaho, 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.¹

¹Reverter 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.