

# TITLE VI & NONDISCRIMINATION PROGRAM

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**Prepared for:**

North Dakota Parks & Recreation Department  
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## I. INTRODUCTION

The North Dakota Parks and Recreation Department (NDPRD) is a recipient of federal financial assistance. Title VI of the Civil Rights Act of 1964 requires recipients to comply with various nondiscrimination laws and regulations. Title VI of the Civil Rights Act of 1964 bars discrimination against anyone in the United States because of race, color, or national origin by any agency receiving federal funds.

The broader application of nondiscrimination law is found in other statutes, regulations, and Executive Orders which are detailed in this Title VI and Nondiscrimination Program. The Federal-Aid Highway Act of 1973 added the requirement that there be no discrimination based on sex. Disability was added through Section 504 of the Rehabilitation Act of 1973 then again with the Americans with Disabilities Act of 1990. Age was subsequently added in 1975 under the Age Discrimination Act.

Additionally, the Civil Rights Restoration Act of 1987 defined "program" to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives federal financial assistance. Thus, sub-recipients are required to comply with Title VI and related nondiscrimination laws and regulations.

Title VI was further defined in 1994, Executive Order 12898 – Environmental Justice (EJ), directed federal agencies to identify and address the effects of all programs, policies, and activities on "minority populations and low-income populations."

In 2000, Executive Order 13166 – Limited English Proficiency (LEP), was also signed into effect requiring federal agencies to assess and address the needs of otherwise eligible limited English proficient persons seeking access to the programs and activities of recipients of federal financial assistance. [See Exhibit D](#)

Title VI regulations are for the protection of the public in regard to NDPRD's activities and effects. NDPRD is the primary recipient of federal financial assistance. Sub-recipients may include contractors, subcontractors, suppliers, consultants, cities, local governments, or any other entity receiving funds directly from NDPRD.

NDPRD is required to protect the public interest by developing a Title VI and Nondiscrimination Program for their benefit. Title VI Assurances are the foundation of our commitment to nondiscrimination. This Title VI plan identifies the implementation, compliance, and enforcement policies and procedures NDPRD has developed to ensure compliance with Title VI at all levels.

**A. Title VI and Nondiscrimination Policy Statement**

**North Dakota Parks and Recreation Department**

**TITLE VI NONDISCRIMINATION POLICY STATEMENT**

Title VI of the Civil Rights Act of 1964 ensures that no person in the United States 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, including sex, age, disability, low-income, or LEP discrimination, under any program or activity for which the Recipient receives Federal financial assistance. The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973) by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally-assisted.

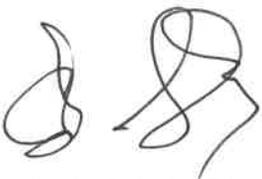
The North Dakota Parks and Recreation Department (NDPRD) is a state government entity. It is the policy of NDPRD to ensure compliance with Title VI of the Civil Rights Act of 1964 and all related statutes or regulation in all programs and activities.

I, as Director of the North Dakota Parks and Recreation Department, am personally committed to and in support of taking all steps to ensure that no person or groups of persons shall, on the grounds of race, color, national origin, sex, age, disability, low-income or LEP discrimination; be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services or activities administered by NDPRD.

The Title VI Coordinator is granted the authority to administer and monitor the Title VI and Nondiscrimination Program as promulgated under the Title VI of the Civil Rights Act of 1964 and any subsequent legislation. The Title VI Specialist will provide assistance as needed.

NDPRD recognizes the need and will provide Title VI training for NDPRD personnel.

Anyone who believes that he or she has been discriminated against would contact the NDPRD Title VI Coordinator at 701-328-5357.



Cody Schulz, Director  
North Dakota Parks and Recreation Department

October 30, 2021  
Date

## II. ORGANIZATION, STAFFING, AND RESPONSIBILITIES

Select NDPRD employees have been appointed by the Director for coordinating the overall administration of the Title VI and Nondiscrimination Program. This group consists of a Title VI Coordinator, and a Title VI Specialist. The primary focus of these select individuals is to ensure Title VI compliance and nondiscrimination in all NDPRD program areas. The individuals selected have other responsibilities in their current positions within NDPRD; therefore, adequate time is being made available for these individuals to carry out their additional Title VI duties and will be included within their work plans. See [Exhibit C](#) for the NDPRD organizational chart.

### A. Director – North Dakota Parks and Recreation Department

The Director is responsible for the overall implementation and administration of the Title VI Program for the North Dakota Parks and Recreation Department (NDPRD). The Director is responsible for the establishment of a Title VI program, designation of a Title VI Coordinator, and providing adequate staffing to effectively implement the Title VI requirements. The Director signs the FHWA Title VI Assurances ensuring compliance in all NDPRD's programs, activities, and services. See [Exhibit A](#).

### B. Title VI Coordinator – Recreation Division Manager

The Title VI Coordinator provides administrative direction necessary to ensure that NDPRD policies and procedures relating to the Title VI Plan are implemented and that its established goals are appropriately attained.

The Title VI Coordinator is charged with the responsibility for implementing, monitoring, and ensuring NDPRD's compliance with Title VI regulations, including:

1. Develop and coordinate the implementation of NDPRD's Title VI and Nondiscrimination Program. Provide technical assistance, guidance, and advice to all levels of NDPRD management on the Title VI program.
2. Develop and implement procedures for the prompt processing and resolution of Title VI discrimination complaints.
3. Coordinate the Title VI and Nondiscrimination Program with support staff such as the Title VI specialist.
4. Review NDPRD's procedures and guidelines as they relate to various program directives, manuals, and other regulations to determine whether Title VI provisions are contained. Where corrections are necessary, the Title VI Coordinator will coordinate revisions.
5. Review findings and recommendations of Title VI reviews. Write reports reflecting findings, conclusions, and corrective actions needed for each program reviewed. Provide summary to the Director by December 1 annually.
6. Review findings and recommendations of sub-recipient reviews. Establish procedures and processes to resolve determinations of noncompliance.
7. Update the Title VI and Nondiscrimination Program Plan for submission to Federal Highway Administration (FHWA).
8. Upon approval by the FHWA, disseminating the plan to all agency divisions and post the annual update of the Title VI program on the NDPRD website.
9. Coordinate with the Title VI Specialist, to obtain signed Title VI Assurances from sub-recipients to adopt or develop and follow a Title VI and Nondiscrimination Program approved by NDPRD.

10. Assist Title VI Specialist in developing and implementation of monitoring activities deemed necessary for contractors, consultants, suppliers, vendors, lessors, universities, colleges, planning agencies, cities, counties, and other sub-recipients of all NDPRD programs.
11. Review NDPRD program directives in coordination with Title VI Specialist and, where applicable, include Title VI and related requirements.
12. Conduct Title VI training programs for the Title VI Specialist.
13. Provide technical assistance and advice on Title VI matters to the Director and the Title VI Specialist.
14. Develop and publish other Title VI, Limited English Proficiency (LEP), and Environmental Justice (EJ) information for dissemination to the public, where appropriate.
15. Monitor inclusion of the Title VI Assurances in all applicable construction and non-construction contracts, consultant agreements, etc., and disseminate the clause and instructions for its use to all NDPRD divisions, Title VI Specialist, and to all sub-recipients.
16. Assist in conducting sub-recipient reviews to assure their compliance with Title VI requirements.

#### **D. Title VI Specialist – Grants Coordinator**

The Title VI Specialist for the NDPRD was assigned to assist in the development and implementation of the NDPRD's Title VI responsibilities. The Title VI Specialist responsibilities include the following:

1. Work closely with the NDPRD Title VI Coordinator to develop and implement policies and procedures to monitor and ensure Title VI compliance in all of NDPRD programs and activities.
2. Communicate to the Title VI Coordinator any deficiencies found in the program and promote new concepts to the program.
3. Provide and prepare data, information, and reports as requested by the Title VI Coordinator.
4. Receive and report concerns of Title VI issues or complaints to the Title VI Coordinator for guidance and/or processing.
5. Include Title VI clauses in contracts, information distributed or advertised to the public, where applicable.
6. Collect statistical data necessary to evaluate the effectiveness of compliance with Title VI requirements.
7. Annually review and update the Title VI and Nondiscrimination Program with coordination from the Title VI Coordinator.
8. Determine and prepare data, information, and reports necessary to evaluate compliance with the Title VI requirements within NDPRD, by sub-recipients and respective program areas.
9. Devise and implement monitoring activities deemed necessary for sub-recipients.
10. Annually conduct Title VI reviews of sub-recipients. This includes developing universal and program-specific questions for sub-recipients based on the federal Title VI regulations and the

FHWA Title VI Desk Reference Manual.

11. Review all construction and non-construction related contracts, and consultant agreements to ensure Title VI Assurances are included, where appropriate.
12. Train sub-recipients and other pertinent staff members in the Title VI requirements.

#### **E. Resources Allocated**

The Director and Chief of Business Services have assured that the NDPRD budget has funds that can be used towards Title VI administration, compliance, and enforcement.

### **III. PROGRAM ADMINISTRATION**

Select NDPRD employees have been appointed by the Director for coordinating the overall administration of the Title VI and Nondiscrimination Program (Title VI Coordinator and Title VI Specialists).

#### **A. Data Collection**

Data collection ensures that NDPRD programs, services, activities, facilities, and projects effectively meet the needs of "all persons" without discrimination; i.e., disproportionately benefiting or harming one group over another is a violation of Title VI. Timely and accurate data allows for better decision-making and provides support to the decisions made. Statistical data on race, color, national origin, sex, age, disability, and when feasible, income status, based on the U.S. Department of Health and Human Services Poverty Guidelines definition of low income, of participants in and beneficiaries of NDPRD programs, e.g., relocates, impacted citizens, and affected communities will be collected and maintained by NDPRD. Each of the Title VI program area, as appropriate, will maintain data to be incorporated in the Title VI Annual Update. The data gathering process will be reviewed regularly to ensure sufficiency of the data in meeting the requirements of the Title VI program administration.

#### **B. Public Involvement**

NDPRD disseminates the Title VI and Nondiscrimination Program internally, via Intranet, to NDPRD employees and externally, via Internet, to sub-recipients, contractors, beneficiaries, and the general public as well as in other formats as requested. Public dissemination of other Title VI information will include posting the Title VI and Nondiscrimination Policy Statement and Title VI Assurances in NDPRD buildings and within all bid advertisements.

#### **C. Complaints**

If any individual believes that she/he or any other program beneficiaries have been subjected to unequal treatment or discrimination in their receipt of benefits and/or services, or on the grounds of race, color, national origin, sex, age, disability, income status, or LEP discrimination, she/he may exercise their right to file a complaint with the NDPRD or FHWA. Individuals can file a complaint using the Title VI Complaint Form. [See Exhibit B.](#)

#### **D. Monitor and Review**

NDPRD monitors Title VI compliance by conducting program reviews. NDPRD has developed a process to conduct Title VI reviews of program areas and sub-recipients to determine the effectiveness of program activities at all levels. Further detail regarding this process may be found in Section IV.

#### **E. Training Program**

The Title VI Coordinator and Specialist conduct Title VI training for NDPRD staff and any other pertinent parties. Scheduled training will be held twice annually.

The Title VI training schedules and attendance will be reported in the annual update.

#### **F. Title VI Plan Update, Accomplishments, and Goals**

The Title VI Coordinator will be responsible for coordination and preparation of the Title VI Program Update, including a goals and accomplishment report for the preceding year, and goals for the coming year. Report to be submitted to FHWA by October 1, annually.

### **IV. MONITOR AND REVIEW**

#### **A. Program Areas**

The Title VI Coordinator and Specialist will coordinate efforts to ensure equal participation in all their programs and activities at all levels in addition to their day-to-day monitoring. Program area reviews are required to be conducted annually within NDPRD. The Title VI Coordinator will conduct reviews to determine the effectiveness of program area activities at all levels.

#### **B. Reviews**

The Title VI Coordinator and Specialist will conduct one review annually of the selected NDPRD division. Reviews will be conducted on a cyclic basis across the four divisions (Administration, Recreation, Planning, and Parks). Refer to North Dakota Parks and Recreation Department Goals section to see review schedule.

The Title VI Specialist will conduct Title VI reviews of the sub-recipients of federal funds. A representative sample of sub-recipients will be reviewed annually at the amount of 1 or 5%; whichever is greater.

#### **C. Operational Guidelines**

NDPRD directives, policies, procedures, and operational guidelines provided to contractors, sub-recipients, and internal programs are reviewed annually to ensure the required Title VI provisions, state law, and related requirements are included.

#### **D. Remedial Action**

NDPRD actively pursues the prevention and corrective action of Title VI deficiencies and violations and takes the necessary steps to ensure compliance with all program requirements, both within NDPRD and its sub-recipients of federal funds. NDPRD will define a remedial action with agreement of FHWA to provide to the sub-recipient within a period not to exceed 90 days.

### **V. TITLE VI COMPLAINT PROCESS**

#### **A. Scope of Title VI Complaints**

The scope of Title VI covers all external NDPRD activities. Adverse impacts resulting in Title VI complaints can arise from many sources, including advertising, bidding, and contracts.

Complaints can originate from individuals or firms alleging inability to bid upon or obtain a contract with NDPRD for the furnishing of goods and/or services. Examples include advertising for bid proposals; prequalification or qualification; bid proposals and awards; selection of contractors, subcontractors, material and equipment suppliers, lessors, vendors, consultants, fee appraisers, universities, etc., or the allocation of funding.

Complaints can originate as a result of project impacts on individuals or groups. For example, social and economic, traffic, noise, air quality, access, accidents, and failure to maintain facilities.

## **B. Formal Title VI Complaint Procedure**

NDPRD's Title VI Policy, as outlined in its Title VI and Nondiscrimination Program, assures that no person or groups of persons shall, on the grounds of race, color, national origin, sex, age, disability, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by NDPRD, its recipients, subrecipients, and contractors. In addition, Executive Order 12898 (Environmental Justice) prohibits discrimination based on income status and Executive Order 13166 prohibits discrimination based Limited English Proficiency (LEP).

NDPRD uses the following detailed, internal procedures for prompt processing of all Title VI complaints received directly by any program having responsibilities under Title VI. These procedures include but are not limited to:

1. Any person or groups of persons who believe they have been aggrieved by an unlawful discriminatory practice under Title VI may individually, or through a legally authorized representative, make and sign a complaint and file the complaint with the North Dakota Parks and Recreation Department Title VI Coordinator. Allegations received do not have to use the key words "complaint," "civil rights," "discrimination," or their near equivalents. It is sufficient if such allegations imply any form of unequal treatment in one or more of NDPRD's programs for it to be considered and processed as an allegation of a discriminatory practice.
2. The complaint must be filed, in writing, no later than 180 calendar days after the date of the alleged discrimination. NDPRD's Title VI Complaint Form (SFN 60460) must be used. [See Exhibit B.](#)
3. The complaint may also be filed with the U.S. Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue, SE (S-33), Washington, D.C. 20590. The complaint must be filed, in writing, no later than 180 calendar days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary, U.S. Department of Transportation.
4. Upon receipt of a formal Title VI complaint, the Title VI Coordinator immediately forwards the complaint to the Federal Highway Administration (FHWA) Division Office. Then informs the NDPRD Agency Director and legal counsel.
  - a) Title VI complaints filed against NDPRD are referred to the FHWA Division Office for processing.
  - b) Title VI complaints filed against a sub-recipient are investigated by NDPRD at the request of FHWA. A copy of the complaint, together with a copy of NDPRD's report of the investigation and recommendations, are forwarded to the FHWA Division Office within 60 days of the date the complaint was received by NDPRD.
  - c) The FHWA Headquarters Office of Civil Rights makes the final agency decision.

Title VI complaints filed against NDPRD, recipients and subrecipients (e.g., contractors, subcontractors, material and equipment suppliers, lessors, vendors, consultants, fee appraisers, universities, etc.) are processed by NDPRD in accordance with the FHWA approved complaint procedures as required under 23 Code of Federal Regulations Part 200.

<http://www.fhwa.dot.gov/civilrights/programs/finalcomplaintmanual110410.cfm>

### **C. Informal Title VI Complaint Procedure**

1. Title VI complaints may be resolved by informal means. When informal means are used, the complainant is informed of his or her right to file a formal written complaint.
2. Such informal attempts and their results are summarized by the Title VI Specialist, and are forwarded to the Title VI Coordinator.
3. Any complaint received in writing is considered to be a formal complaint and is handled under the formal complaint procedure outlined above.
4. The Title VI Specialist periodically informs the FHWA Division Office of the status of all complaints.
5. When a complaint has been directly filed with another federal or state agency, the Title VI Coordinator is to be informed by the division where the complaint has been filed and is to coordinate any action needed by NDPRD to resolve the complaint.

## **NORTH DAKOTA PARKS AND RECREATION DEPARTMENT FY 2022 GOALS**

The following information describes the goals set by the NDPRD for FY 2022 in all programs and divisions.

The NDPRD will:

1. Ensure that a nondiscriminatory process that complies with Title VI requirements is maintained within all programs and activities.
2. Review the Title VI and Nondiscriminatory Program manual and update as needed. Hopefully, the 2020 Census Data will be compiled and reported to update information as needed.
3. Include accomplishment report and FY 2022 goals in the 2022 manual update.
4. Develop and provide Title VI and related nondiscrimination training to NDPRD staff and other pertinent stakeholders as needed.
5. Include Title VI Assurances in all bid advertisements and other related bid documents.
6. Include Title VI Assurances in all future federal aid contracts and agreements.
7. Include minority publications in bid advertisement dissemination.
8. Assist potential federal aid sub-recipients in their development of a Title VI program.
9. Provide a high level of service to our customers in compliance with the established rules and regulations of Title VI.
10. Monitor and timely report any issues or concerns relating to the Title VI program.
11. Annually verify the Title VI Nondiscrimination Policy Statement is properly posted on the NDPRD website.
12. Maintain updates of Title VI information on NDPRD website.
13. Perform annual Title VI program reviews of federal aid recipients and NDPRD programs as needed.
  - FY 2021 – Planning Division Review
  - FY 2022 – Parks Division Review
  - FY 2023 – Administration Division Review
  - FY 2024 - Recreation Division Review
  - FY 2025 – Title VI Manual Update & Program Review
14. Continue ADA compliance with new facility construction and remodel projects.
15. Ensure that the Title VI program is included Scoring Criteria Guidelines and is reviewed at the RTPAC Orientation Meeting.
16. Review applicant Title VI plans and/or policies to ensure information is up-to-date and available to the general public.

## NORTH DAKOTA PARKS AND RECREATION DEPARTMENT FY 2021 ANNUAL UPDATE

The following is the annual update report for fiscal year 2021 as required under Title VI requirements set. This annual update includes an accomplishments report based on the FY 2020 goals, a report on the Title VI update and program review, and the FY 2022 goals.

### Accomplishments Report

NDPRD became Title VI compliant under requirement of 49 CFR Part 21 and 23 CFR Part 22 because NDPRD is a recipient of federal funds. NDPRD's Title VI Non-Discriminatory plan became effective in December of 2013 after final approval from the FHWA Bismarck, ND office.

The Title VI Specialist held three Title VI trainings this year for grant sub-recipients, Recreational Trails Program Advisory Committee (RTPAC), and North Dakota Parks and Recreation Association (NDPRA) Conference. The first Title VI training was held through a virtual (via MS Teams) meeting during the Grants Program Orientation on May 19, 2021. The second Title VI training was held virtually at the RTPAC Board meeting on June 3, 2021 by Pam Todd (FHWA) and Char Langehaug (NDPRD). The third Title VI training was held in person at the NDPRA Conference on Tuesday September 14, 2021 by Char Langehaug. There was also an additional Title VI training held on April 19 for the newly hired Seasonal Grants and Administration Assistant to make sure that they understood and could inform potential or current grantees the requirements of the program. These trainings focused on the basics of Title VI and the formal/informal complaint procedure followed by a question and answer session. Training was given in the form of a PowerPoint presentation authorized by FHWA. Title VI information remains on display for the public on the NDPRD website and at our state parks and recreation areas. Employee Title VI information is also posted on our internal department website, the Woodchipper.

The Title VI Program Manual has been updated to include new goals and updated timelines.

In FY21, NDPRD initiated a Title VI program review to update the Title VI Non-discrimination Policy, review grant sub-recipients' Title VI plans, and create opportunities for potential sub-recipients to become Title VI certified through workshops and additional trainings. This is continuing process into FY22.

*Other plans that were approved were:*

1. Williams County – December 3, 2020
2. Wahpeton Park Board – February 25, 2021
3. City of Casselton – March 15, 2021
4. Bottineau Park District – July 12, 2021
5. City of Mercer – August 17, 2021
6. Theodore Roosevelt Medora Foundation – September 1, 2021

*Reviewed plans:*

1. City of Bismarck Parks and Recreation District on September 14, 2021 – Reviewed in coordination with NDPRA Conference
2. North Dakota Parks and Recreation Department (NDPRD) on October 11, 2021

The specialist is currently working with potential and current sub-recipients to become Title VI certified. We have adapted the Recreational Trails Program (RTP) and Land and Water Conservation Fund (LWCF) application to include a Title VI qualification check box to notify NDPRD of potential Title VI plan reviews, approvals or developments. The grants specialist is currently training the Recreation Division Assistant to assist communities to help write and review plans before they are submitted as a final.

There were no cases of discrimination reported to the Title VI Coordinator or Specialist in FY 2021.

## **EXHIBIT A**

### **Title VI Assurances**

Appendix A

Appendix B

Appendix C

Appendix D

Appendix E

## Title VI Assurances

### The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination Assurances DOT Order No. 1050.2A

The North Dakota Parks and Recreation Department (herein referred to as the "Recipient"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through Federal Highway Administration is subject to and will comply with the following:

#### **Statutory/Regulatory Authorities**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

#### General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*"No person in the United States 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, for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

#### Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Recreational Trails Program.

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Recreational Trails Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

"The North Dakota Parks and Recreation Department in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, North Dakota Parks and Recreation Department also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the Federal Highway Administration's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or compliant investigations conducted by the Federal Highway Administration. You must keep records, reports, and submit the material for review upon request to Federal Highway Administration or its designee in a timely, complete and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The North Dakota Parks and Recreation Department gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Recreation Trails Program. This ASSURANCE is binding on North Dakota Parks and Recreation Department, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Recreation Trails Program. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

North Dakota Parks and Recreation Department  
By  \_\_\_\_\_  
Director

DATED 11-16-21

## APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, 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, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. canceling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the North Dakota Parks and Recreation Department 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 Recreational Trails Program, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the North Dakota Parks and Recreation Department all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto North Dakota Parks and Recreation Department 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 Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the North Dakota Parks and Recreation Department, its successors and assigns.

The North Dakota Parks and Recreation Department, 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 will 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 with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,]

[and]\* (2) that the North Dakota Parks and Recreation Department will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

## APPENDIX C

### CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the North Dakota Parks and Recreation Department pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, North Dakota Parks and Recreation Department will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the North Dakota Parks and Recreation Department will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the North Dakota Parks and Recreation Department and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX D

### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by North Dakota Parks and Recreation Department pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, 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 the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, North Dakota Parks and Recreation Department will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, North Dakota Parks and Recreation Department will there upon revert to and vest in and become the absolute property of North Dakota Parks and Recreation Department and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

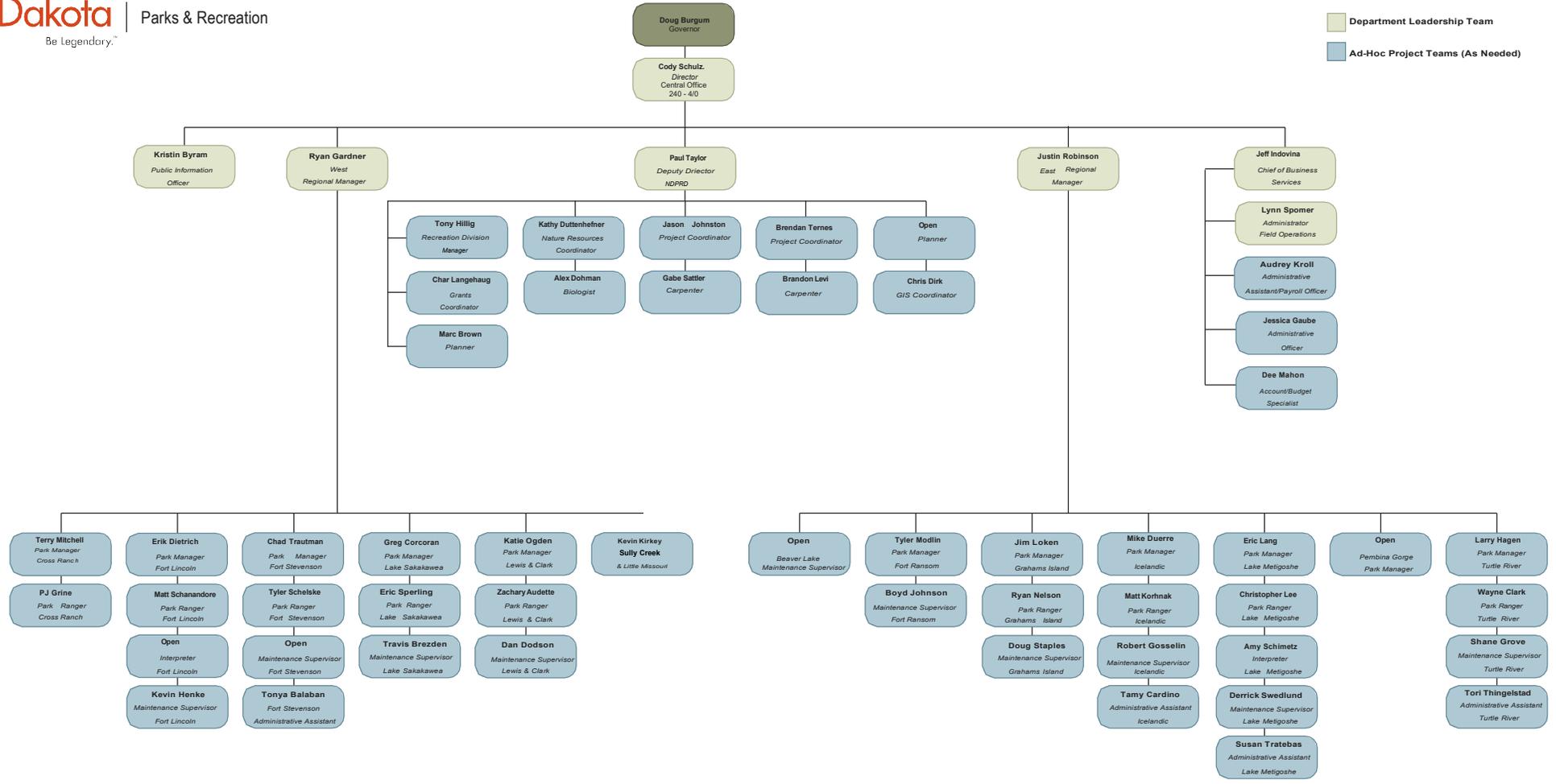
### Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**EXHIBIT B**

**Title VI Complaint Form**

		<b>TITLE VI COMPLAINT</b>	
		NORTH DAKOTA PARKS AND RECREATION	
		SFN 60460 (8-2013)	
Name		Telephone Number	
Address		City	State ZIP Code
Name of Person(s) That Discriminated Against You		Position (if known)	
Date of Incident	Location of Incident		
Address (if known)		City	State ZIP Code
Reason for Discrimination			
<input type="checkbox"/> Race <input type="checkbox"/> Age <input type="checkbox"/> Color <input type="checkbox"/> Sex <input type="checkbox"/> Disability <input type="checkbox"/> National Origin <input type="checkbox"/> Retaliation <input type="checkbox"/> Other, specify:			
Explain as briefly and clearly as possible what happened and how you were discriminated against. Indicate who was involved. Be sure to include how other persons were treated differently than you. Also, attach any written material pertaining to your case.			
Signature		Date	



  Department Leadership Team  
  Ad-Hoc Project Teams (As Needed)

# **Limited English Proficiency Plan**

## **North Dakota Parks and Recreation Department**

**TITLE VI COORDINATOR**

**Anton Hillig – Recreation Division Manager**

**Char Langehaug – Grants Coordinator**

## INTRODUCTION

This *Limited English Proficiency Plan* has been prepared to address the North Dakota Parks and Recreation Department (NDPRD) responsibilities as a recipient of federal financial assistance as they relate to the needs of individuals with limited English proficiency language skills. The plan has been prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and its implementing regulations, which state that no person shall be subjected to discrimination on the basis of race, color or national origin.

Executive Order 13166, titled *Improving Access to Services for Persons with Limited English Proficiency*, indicates that differing treatment based upon a person's inability to speak, read, write or understand English is a type of national origin discrimination. It directs each agency to publish guidance for its respective recipients clarifying their obligation to ensure that such discrimination does not take place. This order applies to all state and local agencies which receive federal funds, including all NDPRD divisions receiving federal grant funds.

### Plan Summary

The NDPRD has developed this *Limited English Proficiency Plan* to help identify reasonable steps for providing language assistance to persons with limited English proficiency (LEP) who wish to access services provided. As defined Executive Order 13166, LEP persons are those who do not speak English as their primary language and have limited ability to read, speak, write or understand English. This plan outlines how to identify a person who may need language assistance, the ways in which assistance may be provided, staff training that may be required, and how to notify LEP persons that assistance is available.

In order to prepare this plan, the NDPRD used the four-factor LEP analysis which considers the following factors:

1. The number or proportion of LEP persons in the service area who may be served by the NDPRD.
2. The frequency with which LEP persons come in contact with NDPRD services.
3. The nature and importance of services provided by the NDPRD to the LEP population.
4. The interpretation services available to the NDPRD and overall cost to provide LEP assistance. A summary of the results of the four-factor analysis is in the following section.

## MEANINGFUL ACCESS: FOUR-FACTOR ANALYSIS

The number or proportion of LEP persons in the service area who may be served or are likely to require NDPRD services.

The NDPRD staff reviewed the 2020 United States Census Bureau 5-Year Estimates for North Dakota and determined that 28,622 individuals in North Dakota, 8.9% of the population speak a language other than English. Of those, 4,271 individuals have limited English proficiency; that is, they speak English less than "very well" or "not at all." This is only 1.3% of the overall population in North Dakota. In North Dakota, of those persons with limited English proficiency, 6.1% speaks Spanish, 21.6% speaks Indo-European Languages, 17.3% speaks Asian and Pacific Island languages, and 14.6% speaks all other languages.

The frequency with which LEP persons come in contact with NDPRD services.

The NDPRD staff reviewed the frequency with which their department staff have, or could have, contact with LEP persons. This includes documenting phone inquiries or office visits. To date, the NDPRD has had no requests for interpreters and no requests for translated program documents. The NDPRD's other staff have had very little contact with LEP persons.

The nature and importance of services provided by the NDPRD to the LEP population.

There is no large geographic concentration of any type of LEP individuals in the service area for the NDPRD. The overwhelming majority of the population, 92.5%, speak only English. As a result, there are few social, service, or professional and leadership organizations within the NDPRD service area that focus on outreach to LEP individuals. The NDPRD staff are most likely to encounter LEP individuals through office visits, phone conversations, notifications from department staff of impacts on service area services and attendance at meetings.

The resources available to the NDPRD, and overall costs to provide LEP assistance.

The NDPRD reviewed its available resources that could be used for providing LEP assistance, which of its documents would be most valuable to be translated if the need should arise, and contacted local citizens that would be willing to provide voluntary Spanish translation if needed within a reasonable time period. Other language translation if needed would be provided through bilingual staff or a telephone interpreter line for which the NDPRD would pay a fee.

## **LANGUAGE ASSISTANCE**

A person who does not speak English as their primary language and who has a limited ability to read, write, speak or understand English may be a Limited English Proficient person and may be entitled to language assistance with respect to NDPRD services. Language assistance can include interpretation, which means oral or spoken transfer of a message from one language into another language and/or translation, which means the written transfer of a message from one language into another language.

How the NDPRD staff may identify an LEP person who needs language assistance:

- Post notice of LEP Plan and the availability of interpretation or translation services free of charge in languages LEP persons would understand.
- All NDPRD staff will be provided with language identification cards or use Google translator to assist in identifying the language interpretation needed if the occasion arises.
- All NDPRD staff will be informally surveyed periodically on their experience concerning any contacts with LEP persons during the previous year.
- When the NDPRD sponsors an informational meeting or event, a staff person may greet participants as they arrive. By informally engaging participants in conversation it is possible to gauge each attendee's ability to speak and understand English. Although translation may not be able to be provided at the event it will help identify the need for future events.

### **Language Assistance Measures**

Although there is a very low percentage of LEP individuals in the NDPRD service area, that is, persons who speak English less than "very well" or "not at all", it will strive to offer the following measures:

1. The NDPRD staff will take reasonable steps to provide the opportunity for meaningful access to LEP clients who have difficulty communicating English.
2. The following resources will be available to accommodate LEP persons:
  - Volunteer language interpreters are available throughout the state and will be provided within a reasonable time and request period.
  - Language interpretation will be accessed for all other languages through a telephone interpretation service.

## **STAFF TRAINING**

The following training will be offered to staff:

- Information on the Title VI Policy and LEP responsibilities.
- Description of language assistance services offered to the public.
- Use of interpreter service provider's language identification cards and/or Google Translator.
- Documentation of language assistance requests.
- How to handle a potential Title VI/LEP complaint.

**All contractors or subcontractors performing work for the NDPRD will be required to follow the Title VI/LEP guidelines.**

## **TRANSLATION OF DOCUMENTS**

The NDPRD weighed the cost and benefits of translating documents for potential LEP groups. Considering the expense of translating the documents, the likelihood of frequent changes in documents and other relevant factors, at this time it is an unnecessary burden to have any documents translated.

Due to the very small local LEP population, the NDPRD does not have a formal outreach procedure in place, as of 2020. Translation resources have been identified and are limited in this region. However, when and if the need arises for LEP outreach, the NDPRD will consider the following options:

- When staff prepares a document, or schedules a meeting, for which the target audience is expected to include LEP individuals, then documents, meeting notices, flyers, and agendas will be printed in an alternative language based on the known LEP population.
- NDPRD will assess requests for translation of documents based on the possible impacts and known LEP population.

Monitoring and Updating the LEP Plan - The NDPRD will update the LEP Plan as required. At a minimum, the plan will be reviewed and updated when data from the 2020 U.S. Census is available, or when it is clear that higher concentrations of LEP individuals are present in the NDPRD service area. Updates will include the following:

- The number of documented LEP person contacts encountered annually.
- How the needs of LEP persons have been addressed.
- Determination of the current LEP population in the service area.
- Determination as to whether the need for translation services has changed.
- Determine whether local language assistance programs have been effective and sufficient to meet the need.
- Determine whether the NDPRD financial resources are sufficient to fund language assistance resources needed.
- Determine whether the NDPRD fully complies with the goals of this LEP Plan.
- Determine whether complaints have been received concerning the agency's failure to meet the needs of LEP individuals.

### **DISSEMINATION OF THE NDPRD LEP PLAN**

- Post signs in NDPRD service area notifying LEP persons of the LEP Plan and how to access language services.
- Post on the NDPRD website and intranet site the LEP Plan and how to access language services.