

NEW APPLICATION  
ORIGINAL



0000017908



**Arizona Department of Transportation**

**Intermodal Transportation Division**

Utility & Railroad Engineering Section  
205 S. 17<sup>th</sup> Ave. Mail Drop 618E Phoenix, Arizona 85007  
Phone 602.712.7541 Fax 602.712.3229

Janet Napolitano  
Governor

Victor M. Mendez  
Director

Michael J. Ortega  
State Engineer

February 16, 2005

Mr. Donald R. Thompson  
Railroad Safety Supervisor  
Arizona Corporation Commission  
1210 West Washington  
Phoenix, Arizona 85007

Arizona Corporation Commission  
**DOCKETED**

FEB 25 2005

DOCKETED BY 

RE: TRACS No. 0940 LA LLA SR172 01C  
Project No. STP-000-6(153)P  
RAIL/HIGHWAY SAFETY PROGRAM  
McVay Road (La Paz Co.)  
Agreement No. 2607-04-ACR  
Arizona & California Railroad Company  
AAR/DOT No: 025-921-F

RR-02632A-05-0125

Dear Mr. Thompson:

Please furnish our office with an Opinion and Order to cover the installation of Signals described in the subject agreement. An agreement covering the work has been signed by the Railroad Company. A copy is attached for your information and files.

After we receive the Opinion and Order, we will send you a copy of our letter authorizing the Railroad to proceed with the work.

Sincerely,

  
John Syers

Railroad Engineering Coordinator

AZ CORP COMMISSION  
DOCUMENT CONTROL

2005 FEB 25 P 4: 54

RECEIVED

# ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

FEDERAL AID

Between

**THE STATE OF ARIZONA**

and

**ARIZONA & CALIFORNIA RAILROAD**

AGREEMENT NO.: 2607-04-ACR  
TRACS NO.: 0940 LA LLA SR172 01C  
PROJECT NO.: STP-000-6(153)P  
RAIL/HIGHWAY SAFETY PROGRAM  
LOCATION: McVAY ROAD (LA PAZ CO.)  
AAR/DOT NO.: 025-921-F

THIS AGREEMENT is made between the STATE OF ARIZONA, acting through its DEPARTMENT OF TRANSPORTATION, and the ARIZONA & CALIFORNIA RAILROAD, a corporation. All lettered exhibits are incorporated and made a part of this agreement by reference and attachment regardless of designation or alphabetical order.

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I        **RECITALS:**

The purpose of this agreement is to furnish and install flashers and gates at McVay Road , in the County of La Paz, State of Arizona, where same crosses the property and tracks of RAILROAD at railroad milepost AP 66.61

II **DEFINITIONS:**

A. ADOT means the ARIZONA DEPARTMENT OF TRANSPORTATION.

B. AGREEMENT means this specific agreement and all attachments incorporated by reference.

C. A.R.S. means Arizona Revised Statutes.

D. MUTCD means the "Manual on Uniform Traffic Control Devices" and any amendments and/or revisions thereto.

E. RAILROAD means the Arizona & California Railroad.

F. SPONSOR means the governmental authority that has jurisdiction over the roadway, County of La Paz.

G. WORK means engineering, design, preparation of plans, specifications, construction labor, materials and equipment called for in the AGREEMENT, including approved changes in scope.

III **AGREEMENT:**

A. Construction Requirements.     The RAILROAD shall furnish all necessary WORK to its existing facilities in accordance with the RAILROAD plans marked EXHIBIT "B". The WORK shall comply with the Signal Manual of Recommended Practice, published by the Association of American Railroads, the MUTCD and the installation procedures and recommendations of the crossing surface manufacturer.

1. Changes in Scope of WORK. Should some unforeseen condition or combination of conditions cause a change in the scope of WORK as called for by the plans, then RAILROAD shall not be obligated to incur, and ADOT shall not be obligated to reimburse RAILROAD for its share of the cost of WORK of changed scope until such change shall have been approved, in writing, by ADOT and RAILROAD.

2. Federal-Aid Project. Pursuant to the provisions of Federal-Aid Policy Guide, Part 646, there is no ascertainable net benefit to RAILROAD, and ADOT agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred in the furnishing of materials and performing the WORK as described in the "Summary of Estimate," marked EXHIBIT "A".

B. Securing Funds. It is understood and agreed that ADOT is acting as an agent for the SPONSOR in securing and administering Federal funds for this project. ADOT's liability is expressly limited to the securing and administering of Federal funds and ADOT assumes no other liability hereunder for the SPONSOR.

C. Subcontracting. The RAILROAD may, if not adequately staffed or equipped to perform the WORK required under this AGREEMENT, subcontract for the WORK. The RAILROAD is hereby given permission to subcontract to the low bidder. The RAILROAD agrees to furnish the bid amount of the successful bid to ADOT. If the RAILROAD wishes to subcontract to other than the low bidder, the RAILROAD must provide to ADOT the amount of the low bid and the amount of the bid from their chosen bidder along with written justification for the proposed choice. The RAILROAD agrees no selection will be made, other than the low bidder, without ADOT's concurrence and written approval. ADOT reserves the right to reject any or all bids other than the low bidder.

1. Equal Opportunity. In compliance with the regulations of the United States Department of Transportation, RAILROAD hereby agrees to comply fully with all of the provisions of Appendix "A" in those cases where RAILROAD does not perform the WORK contemplated in this Agreement with its own forces.

D. Start/Completion Date. Prior to commencing construction, RAILROAD agrees to notify ADOT, in writing, of the actual construction start date. Upon completion, RAILROAD agrees to notify ADOT, in writing, of the actual completion date. The construction start date shall not be prior to receiving a notice to proceed from ADOT. Construction progress payments shall not be made unless ADOT receives the notice of the actual construction start date. Final payment shall not be made unless ADOT receives the notice of the actual construction completion date.

E. Maintenance. After the installation of the WORK has been completed, RAILROAD shall maintain same as long as they remain in place.

F. The Acceptance Date. The acceptance date of this AGREEMENT shall be the day which the last party executes the AGREEMENT.

#### **IV SCHEDULES:**

A. RAILROAD Construction Schedule. The WORK to be performed by RAILROAD hereunder shall be commenced following ADOT authorization letter and shall be completed within such time as is ordered by the Arizona Corporation Commission in its Opinion and Order.

## **V PAYMENTS:**

A. Submission of Invoices The RAILROAD may submit to ADOT monthly invoices for WORK costs from the date of ADOT's authorization for the RAILROAD to proceed with the WORK. Except for the final invoice, monthly invoices shall only be submitted for costs of five hundred dollars (\$500) or more. The RAILROAD shall, within ninety (90) days after completion of WORK, submit to ADOT detailed invoices covering the actual cost of the WORK. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition Regulations. The United States Code of Federal Regulations, 23CFR 646, applies to this agreement. All WORK to be performed by RAILROAD hereunder shall be invoiced on an actual cost basis. All expenses incurred by RAILROAD for WORK which ADOT is obligated to reimburse RAILROAD for hereunder, including all WORK incidental to such WORK but not specifically mentioned herein, shall be subject to the provisions of the Federal-Aid Policy Guide 23CFR 140. All the above costs shall be reasonable and auditable, and reimbursement shall be subject to ADOT's right to audit RAILROAD'S costs.

1. Material Procurement & Payment. Following execution of this instrument, RAILROAD will order the delivery of all materials required to perform the WORK contemplated herein and may submit to ADOT, upon receipt of all the aforementioned materials, an invoice for eighty percent (80%) of the cost of materials to be furnished by RAILROAD. ADOT will pay all of such bills within ninety (90) days after submittal by the RAILROAD.

2. Payments. ADOT agrees to reimburse RAILROAD for the actual costs of labor (including overhead on RAILROAD'S own direct labor), material (including shipping and handling), equipment, subcontracts, and outside services required to complete the WORK

as shown on the plans, marked EXHIBIT "B". In addition, ADOT agrees to pay RAILROAD an agreed lump-sum administrative fee, if shown on EXHIBIT "A", to cover RAILROAD'S expenses in connection with administration of WORK by subcontract and outside services. All billings shall contain ADOT's project number and agreement number. The invoice shall be sent to:

ARIZONA DEPARTMENT OF TRANSPORTATION  
Utility & Railroad Engineering Section  
205 South 17th Avenue, Room 357E  
Mail Drop 618E  
Phoenix, Arizona 85007

3. Timely Payment of Invoices. As soon as the WORK has been completed and placed in operation, RAILROAD shall submit to ADOT a final bill for the cost of WORK performed by RAILROAD, less any progress payments made by ADOT hereunder ADOT agrees to pay RAILROAD the amounts specified in the invoices described in this AGREEMENT above within ninety (90) days, provided RAILROAD shall have complied with the conditions of this Agreement.

4. Reimbursements. RAILROAD agrees to reimburse ADOT within ninety (90) days of notification, for any amounts ADOT disallows as a result of its audit. Any audit exceptions with which RAILROAD disagrees shall be paid to ADOT under protest subject to resolution.

## VI LIABILITY:

A. Liability. ADOT and the RAILROAD each agree to be liable to the other party for its own acts of negligence and the negligence of its own employees.

## **VII STATUTORY MANDATED TERMS:**

A. Arbitration. Claims and disputes between ADOT and RAILROAD involving sums less than \$100,000 and arising out of the terms of this Agreement relating to WORK performed, billing, and similar matters, shall be subject to arbitration, at the request of either party, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining; provided, however, that claims or disputes arising out of personal injury, death, property damage, or environmental incidents shall not be subject to arbitration without the concurrence of both parties, except to the extent otherwise required by the rules of Arizona courts.

B. Budget Limitations. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, A.R.S.

C. Executive order 75-5. The RAILROAD shall comply with all applicable provisions of Executive Order 75-5, "Non-Discrimination in Employment by Government Contractors and Subcontractors".

D. Cancellation by Governor. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. §38-511.

E. Records Retention and Audit. Pursuant to A.R.S. Sections §35-214, §35-215 and §41-1279.04, all books, accounts reports, files and other records relating to this contract shall be subject at reasonable times to inspection and audit by ADOT for five (5) years after the receipt of final payment. Such records shall be produced by RAILROAD at such ADOT offices as designated by ADOT, or at ADOT's discretion said inspection and audit may be held at RAILROAD offices during normal business hours. ADOT shall conduct its inspection

and audit at its sole expense. Final payment shall not include payments made pursuant to audit exceptions or made in resolution of payments under protest.

:

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT.

ARIZONA & CALIFORNIA RAILROAD

ARIZONA DEPARTMENT OF  
TRANSPORTATION

VICTOR M. MENDEZ, DIRECTOR

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: Bruce Vana, P.E. Engineer-Manager  
Utility & Railroad Engineering Section

Date: \_\_\_\_\_

STATE OF ARIZONA        )  
                                  ) §  
COUNTY OF LA PAZ        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2004 before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ of the Arizona & California Railroad, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal..

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF ARIZONA        )  
                                  ) §  
COUNTY OF MARICOPA    )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the undersigned Notary Public, personally appeared Bruce Vana, the Engineer-Manager-Utility & Railroad Engineering Section, Arizona Department of Transportation, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT.

## Summary of Estimate

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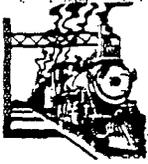
Preliminary Engineering: \$11,000.00

Construction:

Signals \$129,000.00  
\*\$140,000.00

\* Railroad will invoice ADOT for 100% of total work.  
Railroad will separate Signal and Preliminary  
Engineering costs.

TRACS No. 0940 LA LLA SR172 01C  
Project No. STP-000-6(153)P  
Agreement No. 2607-04-ACR  
EXHIBIT "A"  
Sheet 1 of 4



## QUALITY SIGNAL CONSTRUCTION, INC.

Date: February 12, 2004

To: Arizona & California Railroad  
1301 California Avenue  
Parker, AZ 85344

Re: McVay Road - Crossing Project

### Revised - Scope of Work

Quality Signal Construction, Inc., (QSC), is quoting the rail signaling engineering, labor, supervision, materials, installation and incidentals that are not provided by the owner associated with the above state project.

The following is the scope of work for which QSC will be quoting. The work includes installation of two gates, one crossing control house and the associated crossing warning equipment.

#### Engineering, Labor and Supervision

##### Including:

- On staff rail signal engineers, supervisors, foreman and certified rail signalmen
- Functionality review and value engineering of circuit design, track and cable plans, equipment layouts and wiring diagrams
- Testing plans and procedures - submittals and cut-sheets
- Maintenance and instruction manuals
- Completed as-built plans

#### Materials

##### Materials to include the following:

- New signal instrument house, all necessary internal materials, shop assembled, complete wiring and testing (PMD3R, rectifiers, batteries, relays)
- Crossing warning gates, including LED lights - assembled, wired and tested
- Cables, conduit, pull boxes, vaults, foundations, anchor bolts, mounting hardware, ground rods and incidentals as necessary

#### Installation

##### On site work to include

- Installation and testing of all materials indicated above
- Rail bonding and signal support for track work

Railroad Signal Construction & Maintenance

Page 1 of 2

- Final adjustments of all equipment and circuits
- Cutover testing and documentation

**Exclusions**

- We exclude handling any contaminated soils or soil testing
- Any object ½ cubic yard or larger encountered in excavation
- Overhead or underground lines, utilities or pipes other than railroad related
- Insulated joints
- Any compaction testing, dewatering, landscape, irrigation or drainage work
- Underground / overhead utility work, relocation or encasements
- Any flagging by railroad personnel
- Grading, staking or elevation marking
- Permits / fees (other than routine A/C service)
- Any insurance requirements above our current limits
- Other work not specifically included above

**Schedule of Values / Payments**

- Standard billing practices to prevail during construction
- Balance due upon completion

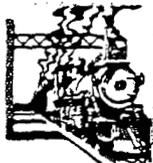
Thank you for considering QSC in your bid. Please be advised that up until the time of notice to proceed, we may find it necessary to alter our scope of work as necessary to compensate for additional information discovered. Please feel free to contact me if you have any questions or concerns.

Thank you,



Robert Bowman  
General Manager

TRACS No. 0940 LA LLA SR172 01C  
Project No. STP-000-6(153)P  
Agreement No. 2607-04-ACR  
EXHIBIT "A"  
Sheet 3 of 4



## QUALITY SIGNAL CONSTRUCTION, INC.

Date: February 12, 2004

To: Arizona & California Railroad  
1301 California Avenue  
Parker, AZ 85344

Re: McVay Road - Crossing Project

### Revised - Bid Quotation

The work covered by this quote, the inclusions and exclusions are as spelled out in our scope letter previously provided, except for the following:

NONE

The value of this quote is: \$129,000.00

We look forward to working with you on this project. Should you have any questions concerning this quote or work items listed in the scope letter, please contact me to discuss.

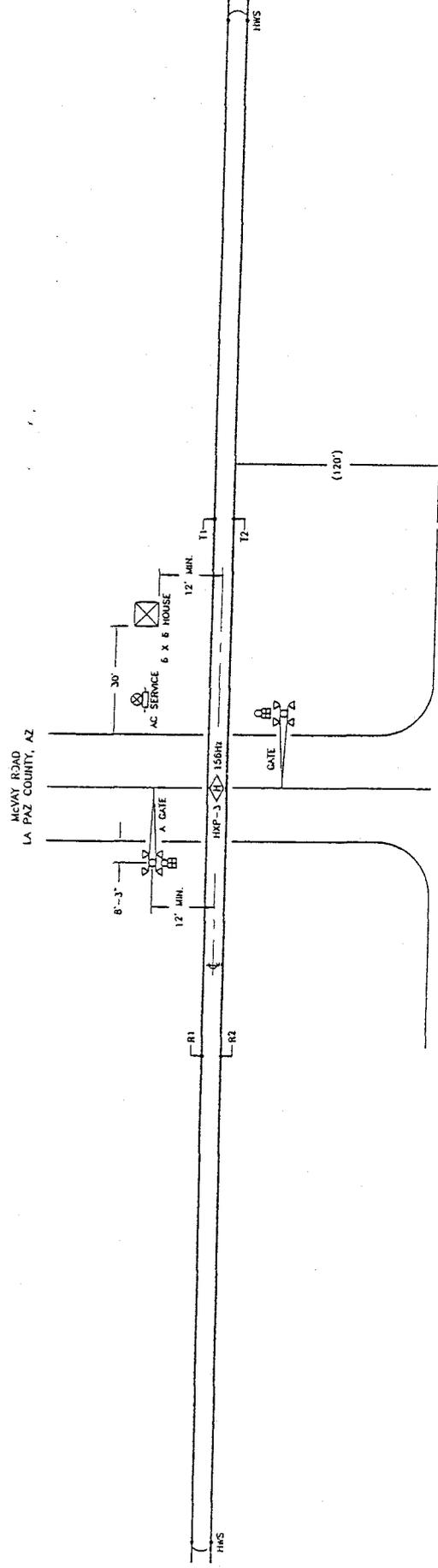
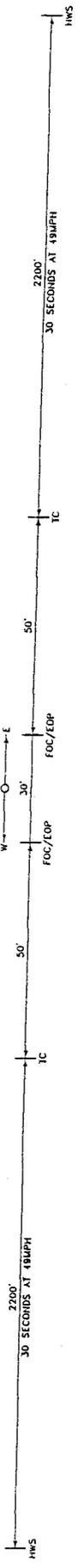
Thank you again for the opportunity to bid on this project.

Respectfully,

Robert Bowman  
General Manager

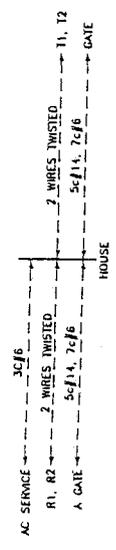
TRACS No. 0940 LA LLA SR172 01C  
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Agreement No. 2607-04-ACR  
EXHIBIT "A"  
Sheet 4 of 4

PLAN MUST NOT BE MODIFIED WITHOUT APPROVAL OF SIGNAL ENGINEER



- NOTES:**
- ISLAND LENGTH IS 130 FEET.
  - FOC/EOP - FACE OF CURB / EDGE OF PAVEMENT.
  - TC - TRACK CONNECTION.

**LEGEND:**  
 - BELL



ARIZONA & CALIFORNIA RAILROAD 1301 CALIFORNIA AVE. PARKER, AZ 85344		QUALITY SIGNAL CONSTRUCTION, INC. <small>1000 N. G. Street, Suite 100, Phoenix, AZ 85007</small>		TRACK LAYOUT McVAY ROAD AND HIGHWAY 72 - LA PAZ COUNTY, AZ		Drawing Number: Q-001	Rev.: 0
		Scale: NONE Design: DRB Drawn: AO Checked: JM Approved: JM Date: 01/05/02				DOT/AAR NO.: 075921S SHEET 1	

TRACS No. 0940 LA LLA SR172 01C  
 Project No. STP-000-6(153)P  
 Agreement No. 2607-04-ACR  
**EXHIBIT "B"**  
 Sheet 1 of 1

APPENDIX A  
(Revised)

II EQUAL OPPORTUNITY

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

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:

a. Compliance With Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, 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.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall 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 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.

c. 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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. 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 State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. 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 the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements 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 subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.