



Jane Dee Hull
Governor

Mary E. Peters
Director

NEW APPLI

Arizona Department of Transportation
Intermodal Transportation Division

Utility & Railroad Engineering Section
205 S. 17th Ave. Mail Drop 618E Phoenix, Arizona 85007
Phone 602.712.7251 Fax 602.712.3229



0000037485

Dick Wright
State Engineer

June 1, 2001

RR-02634A-01-0476

Mr. G. Robert Starkey
Railroad Safety Inspector
Arizona Corporation Commission
1210 West Washington
Phoenix, Arizona 85007

Re: TRACS No. 0940 GH SAF SR131 01C
Project No. STP-000-6(115)P
RAIL/HIGHWAY SAFETY PROGRAM
4th Avenue (Central Avenue)
Agreement No. 2150-00-AZER
Arizona Eastern Railway Company
AAR/DOT No. 742-215-X
RR M.P. BDA 1137.48

DOCUMENT CONTROL
JUN 12 9 20 AM '01
RECEIVED
AZ CORP COMMISSION

Dear Mr. Starkey:

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
John Syers
Railroad Engineering Coordinator

Attachment

**ARIZONA DEPARTMENT OF
TRANSPORTATION**

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

FEDERAL AID

Between

THE STATE OF ARIZONA

and

ARIZONA EASTERN RAILWAY COMPANY

AGREEMENT NO.: 2150-00-AZER
TRACS NO.: 0940 GH SAF SR131 01C
PROJECT NO.: STP-000-6(115)P
RAIL/HIGHWAY SAFETY PROGRAM
LOCATION: 4TH AVENUE
AAR/DOT NO.: 742-215-X

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

RECITALS:

The purpose of this agreement is to furnish and install flashers, gates and a concrete crossing surface at 4th Avenue, in Safford, in Graham County, State of Arizona, where same crosses the property and tracks of RAILROAD at railroad milepost BDA 1137.48.

DEFINITIONS:

1. ADOT means the ARIZONA DEPARTMENT OF TRANSPORTATION.
2. AGREEMENT means this specific agreement and all attachments incorporated by reference.
3. A.R.S. means Arizona Revised Statutes
4. MUTCD means the "Manual on Uniform Traffic Control Devices" and any amendments and/or revisions thereto.
5. RAILROAD means the RAILROAD COMPANY
6. SPONSOR means the governmental authority that has jurisdiction over the roadway, (City of Safford).
7. WORK means engineering, design, preparation of plans, specifications, construction labor, materials and equipment called for in the AGREEMENT, including approved changes in scope.

AGREEMENT:

1. 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.

1.1 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.

1.2 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".

2. 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.

3. 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 the ADOT. If the RAILROAD wishes to subcontract to other than the low bidder, the RAILROAD must provide to the ADOT the amount of the low bid and the amount of the bid from their chosen bidder along

Agreement No. 2150-00-AZER

with written justification for the proposed choice. The RAILROAD agrees no selection will be made, other than the low bidder, without the ADOT's concurrence and written approval. The ADOT reserves the right to reject any or all bids other than the low bidder.

3.1 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.

4. 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.

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

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

SCHEDULES:

7. 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.

PAYMENTS:

8. Submission of Invoices. The RAILROAD may submit to the ADOT monthly invoices for WORK costs from the date of the 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 thousand dollars (\$5,000) or more. The RAILROAD shall, within ninety (90) days after completion of WORK, submit to the 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 140I Subchapter B. All the above costs shall be reasonable and auditable, and reimbursement shall be subject to ADOT's right to audit RAILROAD'S costs.

8.1 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 sixty (60) days after submittal by the RAILROAD.

8.2 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

8.3 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 sixty (60) days, provided RAILROAD shall have complied with the conditions of this Agreement.

9. Reimbursements. RAILROAD agrees to reimburse ADOT within sixty (60) 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.

LIABILITY:

10. 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.

STATUTORY MANDATED TERMS:

11. Arbitration. Pursuant to A.R.S. Section 12-1518, the parties shall use arbitration, after exhausting applicable administrative remedies, to resolve disputes arising out of this AGREEMENT where the sole relief sought is monetary damages of \$100,000 or less exclusive of interest and costs.

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

13. 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".

14. 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.

15. 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

ARIZONA EASTERN RAILWAY
COMPANY

ARIZONA DEPARTMENT OF
TRANSPORTATION

By: Donald Tolle

MARY E. PETERS, DIRECTOR

Title: Gen. Mgr.

By: Bruce Vana

~~Ray Perkins, Jr.~~, P.E., Manager

Its: _____

Utility & Railroad Engineering Section

Date: 12/22/00

Date: 2-27-01

ACKNOWLEDGMENT BY RAILROAD

STATE OF Arizona)
) §
COUNTY OF Gila)

The foregoing instrument was acknowledged before me this 22nd day of December, 2000, by Donald Tolle, the General Mgr. on behalf of the corporation.

My Commission Expires:
March 1, 2002



Jenny M. Sanchez
Notary Public

ACKNOWLEDGMENT BY STATE

STATE OF ARIZONA)
) §
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 27th day of FEBRUARY, 2000, by BRUCE VANA ~~Ray Perkins, Jr.~~, P.E., Manager of the Utility & Railroad Engineering Section, Arizona Department of Transportation.

My Commission Expires:
AUGUST 6, 2004



Lynn M. Jacobs
Notary Public

SUMMARY OF ESTIMATE

	ADOT	ACC	Total
	@94.3%	@5.7%	
Preliminary Engineering:	\$5,658.00	\$342.00	\$6,000.00
Construction:	@94.3%	@5.7%	
Signals	\$104,729.00	\$6,330.00	\$111,059.00
	@100%	@0%	
Surface	\$32,773.00		\$32,773.00
Other	\$7,192.00		\$7,192.00
	\$150,352.00	\$6,672.00	*\$157,024.00

o The approved crossing surface material is timber. Arizona Eastern Railway Company will install a concrete crossing surface and absorb the cost difference as shown in Exhibit "A," Sheets 2, 3 and 4 of 6. The price of the timber surface material shall be determined at the time the concrete surface material is ordered.

* Railroad will invoice ADOT for 100% of total work. Railroad will separate Preliminary Engineering costs from Construction costs. ADOT will pay Railroad 100% of total invoice and invoice ACC for its portion.

Arizona Eastern Railway
4th Ave Crossing Proposal

4/26/00
Mr. John Syers
Arizona Department of Transportation
Railroad Engineering Coordinator
Mail Drop 618E, Room 118E
206 South 17th Ave
Phoenix, Arizona 85007 .3212

RE; Project No. STP - 000 - 6(115) P
TRACS No. 0940 GI ISC SR131 01C
RAIL/HIGHWAY SAFETY PROGRAM
Fourth Ave. Safford, AZ.
AAR / DOT No. 742 - 215 - X
RR M.P. BDA 1137.48

Estimated Project Cost

- Track Material -----	6,764.63
- Crossing Material -----	\$10,026.40
- Labor -----	\$4,373.00
- Equipment -----	\$6,609.00
- Paving Approaches -----	\$4,000.00
- Traffic Control -----	\$1,000.00
- Total Crossing Surface Cost Est. -----	\$32,773.03
Total Signal Cost Est. -----	\$111,059.00
- Administration (Lump Sum) Cost -----	\$7,191.60
Total Project Cost Est. -----	\$151,023.63

TRACS No. 0940 CH SAF SR131 01C
Project No. STP-000-6(115)P
Agreement No. 2150-00-AZER
EXHIBIT "A"
Sheet 2 of 6

Project No. STP-000-6(115)P
 TRACS No. 0940 GH SAF SR131 01C
 RAIL/HIGHWAY SAFETY PROGRAM
 4th Avenue Safford
 ARR/DOT NO. 742-215-X
 Arizona Eastern Railway
 RR M.P. BDA 1137.48

Track Material

10FT TIES	55	@ \$ 49.00	\$2,695.00
132lb Rail	4 - 39ft	@ \$ 341.49	\$1,365.93
Ballast	120 Ton	@ \$15.00	\$1,800.00
OTM			\$903.70
Total			\$6,764.63

Crossing Materials

Surface: Timber	56FT Track	\$154.33 Per T.F.	\$8,643.00 Total
Rail Welds	4 Kits	\$70.00	\$280.00
Insu. Bars	4 Pr.	\$275.85	\$1,103.40
Total			\$10,026.40

Labor

Foreman	1	36 hrs	\$498.60
Equip. Oper	2	72 hrs	\$933.12
Laborers	3	108 hrs	\$1,301.40
Total		Fringe	\$1,639.87 <u>\$2,733.12</u> \$4,373.00
3 Day Total /w & Fringes			\$4,373.00

Equipment (days)

Loader	3	\$475.00	\$1,425.00
Backhoe	3	\$190.00	\$570.00
BoomTruck	3	\$200.00	\$600.00
Generator	3	\$44.00	\$132.00
AirComp.	3	\$94.00	\$282.00
Power Tamper	2	\$1,800.00	\$3,600.00
Total			\$6,609.00

Paving Approaches \$4,000.00
 Traffic Control \$1,000.00

Trackwork Project
 Cost Estimated Total \$32,773.03
 Signal Cost Total \$111,059.00
 \$143,832.03
 \$7,191.60

Administration (Lump Sum) Cost
 TRACS No. 0940 CH SAF SR131 01C
 Project No. STP-000-6(115)P
 Agreement No. 2150-00-AZER
 EXHIBIT "A"
 Sheet 3 of 6

Project Cost Total \$151,023.63

Project No. STP-000-6(115)P
 TRACS No. 0940 GH SAF SR131 01C
 RAIL/HIGHWAY SAFETY PROGRAM
 4th Avenue Safford
 ARR/DOT NO. 742-215-X
 Arizona Eastern Railway
 RR M.P. BDA 1137.48

Track Material

10FT TIES	55	@ \$ 49.00	\$2,695.00
132lb Rail	4 - 39ft	@ \$ 341.49	\$1,365.93
Ballast	120 Ton	@ \$15.00	\$1,800.00
OTM			\$903.70
Total			\$6,764.63

Crossing Materials

Surface Concrete	56FT Track	\$186.00 Per T.F.	\$10,416.00 Total
Rail Welds	4 Kits	\$70.00	\$280.00
Insu. Bars	4 Pr.	\$275.85	\$1,103.40
Total			\$11,799.40

Labor

Foreman	1	36 hrs	\$498.60
Equip. Oper	2	72 hrs	\$933.12
Laborers	3	108 hrs	\$1,301.40
Per Day Total		Fringe	\$1,639.87
			\$2,733.12
3 Day Total /w Overhead & Fringes			\$4,373.00

Equipment (days)

Loader	3	\$475.00	\$1,425.00
Backhoe	3	\$190.00	\$570.00
Boom Truck	3	\$200.00	\$600.00
Generator	3	\$44.00	\$132.00
Power Tamper	2	\$1,800.00	\$3,600.00
AirComp.	3	\$94.00	\$282.00
Total			\$6,609.00

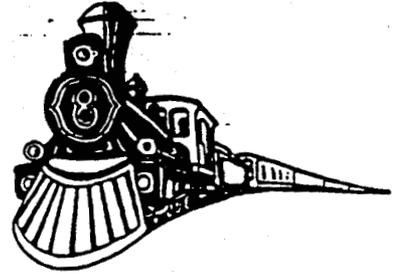
Paving Approaches \$4,000.00
 Traffic Control \$1,000.00

Trackwork Project
 Cost Estimated Total \$34,546.03
 Signal Cost Total \$111,059.00
 \$145,605.03
 \$7,280.25

Administration (Lump Sum) Cost

TRACS No. 0940 CH SAF SR131 01C
 Project No. STP-000-6(115)P
 Agreement No. 2150-00-AZER
 EXHIBIT "A"
 Sheet 4 of 6

Project Cost Total \$152,885.28



COST ESTIMATE

RAILROAD TRAFFIC CONTROL, INC.

TO ARIZONA EASTERN RAILWAY CO.
P.O. BOX Y
CLAYPOOL, ARIZONA 85532-1008

FEB. 15 1999

4924 Valley View Ct. • Dunwoody, GA 30338 • (404) 393-2298

LOCATION FOURTH STREET-SAFFORD, AZ.
TRACS. NO. 0940 GH SAF SR131 01C

PROJECT IDENT. PROJECT NO. STP-000-6(115)P
AAR/DOT NO. 742-215-X
RR/MP BDA 1137.48

ESTIMATED PROJECT COST

<u>PRELIMINARY ENGINEERING</u> -----	3,500.00
<u>CONSTRUCTION ENGINEERING</u> -----	3,500.00
<u>SIGNAL MATERIAL</u> -----	55,409.00
<u>COMMERCIAL MATERIAL</u> -----	11,775.00
<u>TRANSPORTATION OF MATERIAL</u> -----	2,016.00
<u>STORAGE EXPENSE</u> -----	3,359.00
<u>RENTAL EQUIPMENT</u> -----	3,500.00
<u>CLERICAL & ADMINISTRATION</u> -----	1,000.00
<u>MEALS & LODGING</u> -----	4,000.00
<u>LABOR INCLUDING PAYROLL, TAXES, INSURANCE, ETC.</u> -----	19,500.00
<u>SHIPPING CHARGES FOR MATERIAL</u> -----	3,500.00
 <u>COST ESTIMATE TOTAL</u> -----	 111,059.00

TRACS No. 0940 CH SAF SR131 01C
Project No. STP-000-6(115)P
Agreement No. 2150-00-AZER
EXHIBIT "A"
Sheet 5 of 6

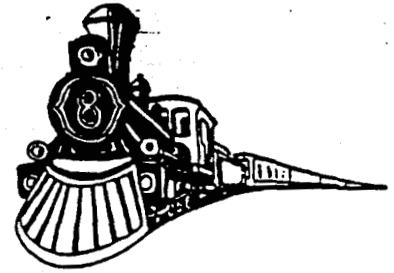
NOTE
INCLUDED IN THIS PROJECT PRICE IS THE UP-GRADING OF
ROUTE 191 TO A MOTION SENSOR SYSTEM. ALSO THE ADDITION OF
A NARROW BAND SHUNT TO THE 8TH-&-8TH STREET CROSSING SYSTEM.

COST ESTIMATE

-2-

TO ARIZONA EASTERN RAILWAY CO.
P.O. BOX Y
CLAYPOOL, ARIZONA 85532 1008

FEB. 15 1999



FOURTH STREET SAFFORD ARIZONA

RAILROAD TRAFFIC CONTROL, INC.

4824 Valley View Ct. • Dunwoody, GA 30338 • (404) 393-2298

<u>UNITS</u>	<u>SIGNAL MATERIALS</u>	<u>PRICE</u>
2 EA.	GATE COMP. WITH 10M ARM X-BUCK, ONE SET OF BACK TO BACK 12" SIGNALS, BELL, JCT. BOX, FOUND.	19,134.00
1 EA.	CONTROL HOUSE WIRED COMP. FOR SPECIFIED SYSTEM REQUIREMENTS.	6,500.00
1 EA.	FLASHER RELAY.	1,600.00
2 EA.	RELAY FOUR POINT	2,000.00
2 EA.	POWER SUPPLY & BATTERY CHARGER	1,375.00
7 EA.	LIGHTNING ARRESTER	350.00
1 EA.	CIRCUIT BREAKER	40.00
1 EA.	TRAFFIC LOG (RECORDER)	2,400.00
3 EA.	RESISTOR	90.00
1 EA.	MOTION SENSOR	9,500.00
1 EA.	MOTION SENSOR (FOR ROUTE 191)	9,500.00
4 EA.	NARROW BAND SHUNT	2,835.00
EA.	EMERGENCY CUT OUT SWITCH.	85.00
	SIGNAL MATERIAL TOTAL	55,409.00

COMMERCIAL MATERIAL

1 EA.	FOUNDATION FOR HOUSING.	1,200.00
122 M.	LENGTHS OF CONDUIT.	720.00
1 EA.	LOT OF RAIL BOND EQUIPMENT	360.00
1 EA.	LOT OF A.C. POWER SERVICE	1,200.00
2 EA.	SETS OF STORAGE BATTERY	1,900.00
8 EA.	TRACK CIRCUIT CONNECTION KIT	1,440.00
133 M.	WIRE #8 AWG	4,500.00
310 K.	STONE	100.00
6 M.	CABLE MULTI CONDUCTOR STRANDED # 8 AWG	30.00
8 M.	CABLE MULTI CONDUCTOR STRANDED # 10 AWG	25.00
50 M.	WIRE #10 AWG STRANDED	50.00
1 EA.	LOT OF MISC. MATERIAL	250.00
	COMMERCIAL MATERIALS TOTAL	11,775.00

ESTIMATED NUMBER OF DAYS TO COMPLETE THE INSTALLATION AFTER NOTIFICATION TO PROCEED IS 65 DAYS.

TRACS No. 0940 CH SAF SR131 01C
Project No. STP-000-6(115)P
Agreement No. 2150-00-AZER
EXHIBIT "A"
Sheet 6 of 6

2 OF 2

AAR/DDT 742-215-X

Existing 8" Flasher / Remove
Install 4 New 12" Flashers Sets
& 30' Gate

Install New curb 25' R

Existing Curb 4' R
Remove radius

Railroad Ave.

Sidewalk

54'

4th Ave
Safford

30'

10'

Existing 8" Flashers / Remove

Remove Rail & Ties

Install New 12" Flasher
& 34' Gate

Sidewalk

TRACS No. 0940 CH SAF SR131 01C
Project No. STP-000-6(115)P
Agreement No. 2150-00-AZER
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.