

August 21, 2006

TO: Phillip L. Nelson, City Manager

FROM: Brian Murphy, Assistant City Manager/Services  
 Steven J. Vandette, City Engineer

SUBJECT: **Agenda Item** – Approval of MDOT Intermodal Passenger Station Capital Contract, No. 2006-0537

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**RECOMMENDATION**

Staff recommends that City Council approve the attached Capital Contract, No. 2006-0537, with the Michigan Department of Transportation (MDOT) for the purposes of planning and designing an intermodal transportation facility in the City of Troy.

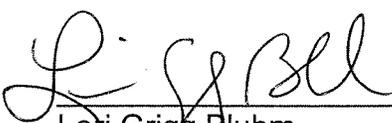
**SUMMARY**

The contract provides for the following items:

1. MDOT will make Three Hundred Fifty Thousand Dollars (\$350,000) available to the City for the project.
2. The City will arrange for the performance of planning and design work necessary for construction of the station.
3. MDOT will reimburse the City for all eligible project costs, not to exceed \$350,000 unless by prior written amendment to the contract.
4. The City will sublet the work with written consent of the MDOT.

**FUNDING**

The amount available from the MDOT represents an estimated cost to complete the project and may be subject to revision and adjustment, however; no city funds are committed by approval of this capital contract.

Reviewed as to form and legality:  8/23/06

Lori Grigg Bluhm Date

**MICHIGAN DEPARTMENT OF TRANSPORTATION**

**CITY OF TROY**

**INTERMODAL PASSENGER STATION CAPITAL**

**CONTRACT**

THIS CONTRACT is made and entered into this day of \_\_\_\_\_ by and between the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," and the City of Troy, hereinafter referred to as the "CITY."

WITNESSETH:

WHEREAS, the State of Michigan has appropriated funds for capital improvements related to the intercity railroad passenger service; and

WHEREAS, the parties desire to provide for the development (planning) and design of an intermodal transportation facility in the city of Troy, Michigan;

NOW, THEREFORE, the parties agree as follows:

**Section 1. PURPOSE**

This Contract is to provide for the development (planning) and design of an intermodal transportation facility in the city of Troy, as set forth in Exhibit 1, attached hereto and made a part hereof, such work hereinafter referred to as the "PROJECT." Such work will provide for the development of passenger facilities that are designed to encourage increased rail travel and expanded intermodal coordination and integration and will improve the attractiveness, reliability, safety, and economic efficiency of the rail passenger service.

The DEPARTMENT will participate in the PROJECT by making Three Hundred Fifty Thousand Dollars (\$350,000.00), available to the CITY for use in financing the PROJECT, as set forth in Section 4.

## **Section 2. PROJECT**

The CITY will arrange for the performance of the PROJECT, which includes the development (planning) and design for the construction of the station. The PROJECT work will include determining the scope, physical characteristics, and dimensions of the station, including those of the waiting rooms, administrative offices, and interim and long-term parking lots; addressing applicable environmental reviews; considering the necessary factors in the planning and design of facility areas to handle ticket sales, passenger and employee security, baggage and express, boarding and deboarding, and equipment parking, servicing, and storage; determining commercial development; and considering associated operational passenger services and safety issues. The PROJECT will include an assessment of pedestrian circulation needs, both within and around the boundaries of the selected site, and the CITY will assure that the facility's design is in compliance with the requirements of the Americans with Disabilities Act.

PROJECT work will also include estimating construction costs and ongoing station operation costs and establishing a construction schedule and time frame. PROJECT tasks will include identifying and estimating the costs of railroad infrastructure improvements necessary to support efficient and reliable rail passenger and freight services once the station is completed.

## **Section 3. COST**

The DEPARTMENT and the CITY agree that the maximum PROJECT amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) set forth in Exhibit 1 represents estimated line item costs required to complete the PROJECT and may be subject to revision and adjustment. Therefore, the DEPARTMENT and the CITY agree that revision(s) or adjustment(s) to estimated line item costs set forth in Exhibit 1 are permitted, provided, however, that such revision(s) or adjustment(s) will not result in an increase in the financial obligations of the DEPARTMENT, as set forth in Section 4 of this Contract, or in a change in the scope of the PROJECT, unless by prior award of a written amendment to this Contract, whether before commencement of the PROJECT or during the course of the PROJECT.

If costs are incurred for the PROJECT that are not approved by the DEPARTMENT, those costs will not be eligible for reimbursement and will remain the responsibility of the CITY. If for any reason this Contract is not awarded, the DEPARTMENT will not be responsible for any expenses that have been incurred.

No work may begin on the PROJECT until the DEPARTMENT provides a written notification to proceed to the CITY.

## **Section 4. COST REIMBURSEMENT**

The DEPARTMENT agrees to reimburse the CITY for all eligible PROJECT costs, as set forth in Exhibit 1, not to exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) of DEPARTMENT funds.

Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR, Federal Acquisition Regulations, Part 31, incorporated herein by reference as if the same were repeated in full herein.

#### **Section 5. METHOD OF REIMBURSEMENT**

- a. The reimbursements identified in Section 4 will be made by the DEPARTMENT against invoices presented to it by the CITY detailing actual costs by the CITY and/or its subconsultants (including labor costs based on actual hours worked, fringe benefits, materials, equipment, and overhead) as well as evidence of payment and/or other supporting documentation by the CITY. Reimbursement for costs incurred is subject to review and approval by the DEPARTMENT.
- b. The CITY will submit, along with each invoice identified in Section 5 (a), a PROJECT billing summary showing actual PROJECT costs to date. The CITY agrees that the costs reported to the DEPARTMENT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The CITY also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.
- c. The DEPARTMENT will reimburse the CITY for the allowable PROJECT costs and expenses, as set forth in Exhibit 1 and as shown in the CITY's billings, as received and approved by the DEPARTMENT, within forty-five (45) days of receiving said billings, up to a maximum amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) of DEPARTMENT funds. Upon receipt by the DEPARTMENT of the billings from the CITY, the DEPARTMENT will reimburse the CITY the total allowable amount as reviewed and approved by the DEPARTMENT.

#### **Section 6. AUDIT AND RECORD RETENTION**

The CITY agrees to the following:

- a. The CITY will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred under this contract.
- b. The CITY will comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507) and the OMB Circular A-133, as revised or amended, and the provisions of 1951 PA 51; MCL 247.660h; MSA 9.1097 (10i), as applicable with regard to audits, that are in effect at the time of Contract award.

- c. The CITY will maintain the RECORDS for at least three (3) years from the date of final payment made by the DEPARTMENT under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the CITY will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
- d. The DEPARTMENT or its representative may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
- e. The entire PROJECT will be subcontracted. The CITY will assure compliance with subsections (a), (b), (c), and (d) above for all subcontracted work.
- f. The CITY must comply with applicable state laws and regulations relative to audit requirements.
- g. The CITY is subject to state monitoring activities, which may include limited scope reviews and other on-site monitoring.

## **Section 7. AUDIT AND REPAYMENT**

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, the DEPARTMENT will promptly submit to the CITY a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the CITY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the CITY will (a) respond in writing to the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE." The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the CITY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE will refer to and apply the language of the Contract. The CITY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the CITY, the CITY will repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date

of an invoice from the DEPARTMENT. If the CITY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the CITY agrees that the DEPARTMENT will deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the CITY under this Contract or any other agreement or payable to the CITY under the terms of PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The CITY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT's decision only as to any item of expense the disallowance of which was disputed by the CITY in a timely filed RESPONSE.

#### **Section 8. INDEMNIFY AND SAVE HARMLESS**

In addition to the protection afforded by any policy of insurance, the CITY agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, the Federal Highway Administration (FHWA), and all officers, agents, and employees thereof:

- a. from any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to the CITY in connection with the CITY's performance of the PROJECT; and
- b. from any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, response and cleanup costs, and for attorney fees and related costs arising out of, under, or by reason of the CITY's performance of the PROJECT under this Contract, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents, or its employees. The CITY's obligation to indemnify the DEPARTMENT with respect to environmental damage, degradation, and response and cleanup costs will be limited to environmental damage caused directly by the CITY's use of property. This provision will not be construed as an admission that the DEPARTMENT and/or the CITY is/are liable for contamination already on the selected property.

The DEPARTMENT will not be subject to any obligations or liabilities by contractors of the CITY or its subcontractors or any other person not a party to the Contract without its specific consent and notwithstanding its concurrence with or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the CITY will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under

this Contract that results in claims being asserted against or judgments being imposed against the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, and/or the FHWA, as applicable.

In the event that the same occurs, it will be considered a breach of this Contract, thereby giving the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, and/or the FHWA, as applicable, a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

#### **Section 9. NONDISCRIMINATION**

- a. This Contract is subject to the provisions of 49 CFR Part 265 - Nondiscrimination in Federally Assisted Railroad Programs. Pursuant thereto, the provisions of 49 CFR 265.7 (a), (1) through (15), are expressly incorporated herein by reference, provided, however, that the CITY and the DEPARTMENT will each be deemed a "recipient" thereunder.
- b. In connection with the performance of the PROJECT under this Contract, the CITY (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated March 1998, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.
- c. During the performance of this Contract, the CITY, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the "contractor"), agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241 as amended, being Title 42 USC Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix B, dated June 2003, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.

#### **Section 10. SUBLETTING**

No portion of the PROJECT will be sublet without the prior written consent of the DEPARTMENT. Consent to sublet any portion of the PROJECT will not be construed to relieve the CITY of any responsibility or obligation under or for the fulfillment of this Contract. All contracts, including amendments with subcontractors, in excess of Twenty-Five Thousand Dollars (\$25,000.00), will be submitted to the DEPARTMENT for approval prior to award and will contain all applicable provisions of this Contract. Any such approvals will not be construed as a warranty of the subcontractor's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity.

## **Section 11. ENTIRE CONTRACT**

This Contract constitutes the entire agreement between the parties with respect to the PROJECT. There are no other agreements, either expressed or implied. All prior contracts, agreements, and understandings between the parties with respect to the PROJECT are subsumed within this Contract. Except as otherwise provided in this Contract, no change in, modification to, or amendment to this Contract will be of any force or effect unless in writing, dated, and awarded by the duly authorized representatives of the parties.

## **Section 12. TERM**

This Contract will be in effect from the date of award through December 30, 2007. No PROJECT work may begin until the CITY receives written notification to proceed from the DEPARTMENT.

Prior to expiration, the time for completion of performance under this Contract may be extended by the DEPARTMENT upon written request and justification from the CITY. Upon approval and authorization of the DEPARTMENT, a written time extension amendment will be issued by the DEPARTMENT. The terms and conditions of the extension will be set forth in the amendment. Any such extension will not operate as a waiver by the DEPARTMENT of any of its rights herein set forth.

## **Section 13. CHANGES**

Any change in scope or character of the PROJECT or in the cost, compensation, or term of this Contract will be by award of a prior written amendment to this Contract by the parties.

## **Section 14. TERMINATION**

The DEPARTMENT may terminate this Contract for convenience or cause, as set forth below, before the PROJECT is completed. Written notice of termination will be sent to the CITY. The CITY will be reimbursed in accordance with the following:

a. **Termination for Convenience:**

If the DEPARTMENT terminates this Contract for convenience, the DEPARTMENT will give the CITY written notice of such termination thirty (30) days prior to the date of such termination, and the CITY will be reimbursed for eligible PROJECT costs, not to exceed Three Hundred Fifty Thousand Dollars (\$350,000.00), incurred up to receipt of said Notice of Termination. In no case will the compensation paid to the CITY for partial completion of the PROJECT exceed the amount the CITY would have received had the PROJECT been completed.

b. **Termination for Cause:**

In the event the CITY fails to complete any part of the PROJECT in a manner satisfactory to the DEPARTMENT, the DEPARTMENT may terminate this Contract. If the DEPARTMENT terminates this Contract for cause before the PROJECT is completed, the DEPARTMENT will not reimburse the CITY for any PROJECT costs. Written notice of termination will be sent to the CITY.

In the event that termination by the DEPARTMENT is necessitated by any wrongful breach, failure, default, or omission by the CITY, the DEPARTMENT will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the CITY under this Contract, as well as any other existing or future contracts between the CITY and the DEPARTMENT, for any and all damages and costs incurred or sustained by the DEPARTMENT as a result of its termination of this Contract due to the wrongful breach, failure, default, or omission by the CITY. In the event of termination of this Contract, the DEPARTMENT may procure the PROJECT work from other sources and hold the CITY responsible for any damages or excess costs occasioned thereby.

**Section 15. UNFAIR LABOR PRACTICES**

In accordance with 1980 PA 278, MCL 423.321 et seq; MSA 17.458(22) et seq; the CITY, in the performance of this Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a Federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 U.S.C. 158. The DEPARTMENT may void this Contract if the name of the CITY or the name of a subcontractor, manufacturer, or supplier utilized by the CITY in the performance of this Contract subsequently appears in the register during the performance period of this Contract.

**Section 16. SEVERABILITY**

If any part of this Contract is determined to be invalid, illegal, or unenforceable, such determination will not affect the validity, legality, or enforceability of any other part of this Contract, and the remaining parts of this Contract will be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

**Section 17. ASSIGNMENT OF ANTITRUST RIGHTS**

With regard to claims based on goods or services that were used to meet the CITY's obligation to the DEPARTMENT under this Contract, the CITY hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT due to any violation of 15 USC,

Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT.

The CITY shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT with regard to claims based on goods or services that were used to meet the CITY's obligation to the DEPARTMENT under this Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT as a third-party beneficiary.

The CITY shall notify the DEPARTMENT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the CITY's obligation to the DEPARTMENT under this Contract may have occurred or is threatened to occur. The CITY shall also notify the DEPARTMENT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the CITY's obligation to the DEPARTMENT under this Contract.

**Section 18. AWARD**

This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the CITY and the DEPARTMENT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective representative(s) of the CITY, a certified copy of which resolution will be sent to the DEPARTMENT with this Contract, as applicable.

IN WITNESS WHEREOF, the parties have caused this Contract to be awarded.

CITY OF TROY

BY: \_\_\_\_\_  
Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
Title: Department Director

8/2/06  
*JM*

Contract 2006-0537  
Project # 88253A  
July 31, 2006

EXHIBIT 1

THE CITY OF Troy  
And  
THE STATE OF MICHIGAN

Development (planning) and design phase  
of intermodal transportation facility \$ 350,000.00

PROJECT TOTAL \$350,000.00

Total cost to be contributed by the Michigan Department of  
Transportation. \$350,000.00

Funding Source:

FY 2006/77090 \$350,000

**APPENDIX A**  
**PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. 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, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative 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 advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.

7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

March 1998

**APPENDIX B  
TITLE VI ASSURANCE**

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 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.
2. **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 Regulation, including employment practices when the contractor covers a program set forth in Appendix B of the Regulations.
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 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.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway department of 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.
5. **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:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a 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.