

CITY OF REDMOND, WASHINGTON

RESOLUTION NO. 326

A RESOLUTION, approving agreement between the City of Redmond and Burlington-Northern, Inc. for the construction and maintenance of a railroad crossing of 170th Avenue N.E. at MP 7+802; and authorizing and empowering the Mayor and City Clerk to execute such agreement on behalf of the City of Redmond.

WHEREAS, the City desires to construct a public grade crossing of the trackage and right-of-way of Burlington-Northern, Inc. in connection with the extension of 170th Avenue N.E. designated by Burlington-Northern as Railway Survey Station 337+41, MP 7+802; and

WHEREAS, the parties involved have worked out an agreement, granting the City an easement for roadway purposes only, and providing for the construction and maintenance of the railway crossing facility; and

WHEREAS, the City Council has duly considered the proposed agreement and the recommendations of the Director of Public Works and deemed such agreement is in the public interest and should be approved, Now, Therefore,

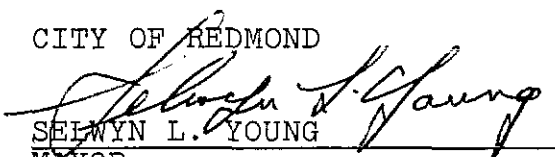
THE CITY COUNCIL OF THE CITY OF REDMOND DO RESOLVE AS FOLLOWS:

1. Agreement approved. The proposed agreement between the City of Redmond and Burlington-Northern, Inc., for the grant of an easement for a public roadway crossing in the extension of 170th Avenue N.E. at the referenced point designated by the railroad as Railway Survey Station 337+41, MP 7+802, and providing for the construction and maintenance of such a crossing, a copy of which is attached and by this reference made a part hereof, is hereby approved.

2. Execution authorized. The Mayor and City Clerk are hereby authorized and empowered to sign said agreement on behalf of the City of Redmond.

PASSED by the Council of the City of Redmond, Washington, at a regular meeting thereof, and APPROVED by the Mayor this 16 day of October, 1973.

CITY OF REDMOND

  
SELWYN L. YOUNG  
MAYOR

ATTEST:

  
ELEANOR J. HAYDEN  
CITY CLERK

APPROVED AS TO FORM:

  
JOHN D. LAWSON  
CITY ATTORNEY

CONSTRUCTION AND MAINTENANCE AGREEMENT

PUBLIC CROSSING MP 7+802 AT REDMOND, WASHINGTON  
170th Ave. N.E.

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and

between the BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called the "Railway" and the CITY OF REDMOND, a municipal corporation of the State of Washington, hereinafter called the "City";

WITNESSETH:

WHEREAS, in the interest of aiding motor vehicle traffic, the City desires to construct a public grade crossing, the centerline of which crosses the Railway's right of way and tracks at Railway Survey Station 337+41, MP 7+802, in the Southeast quarter of Section 12, Township 25 North, Range 5 East Willamette Meridian of its Woodinville to North Bend line in Redmond, Washington, at the location shown on map marked Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, in connection therewith the City desires to acquire a permanent easement for roadway purposes and to improve said roadway, and the Railway will be required to perform certain work on its facilities, all as shown on said Exhibit "A"; and

WHEREAS, the parties hereto desire the project for the improvement of the grade crossing to be performed in accordance with plans and specifications to be prepared by the City; and

WHEREAS, the City and the Railway agree that the Railway will receive no benefits from the said project, and the City is willing to undertake the construction of the said project with City funds available for such purposes; and

WHEREAS, the parties hereto desire to contract with reference to the work to be done by each of them in connection therewith, the protection of Railway facilities and the payment of costs and expenses therein involved;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed as follows:

I

The Railway shall grant to the City, for and in consideration of the sum of \$550.00, by separate instrument, an easement for roadway purposes only upon and across the surface of the Railway's right of way as shown outlined green on Exhibit "A".

II

The City shall perform all work in accordance with detailed plans and specifications which shall be prepared by the City and submitted to the Railway for approval and to be approved by it where such plans and specifications are applicable or affect any right of way or facility of the Railway. Such plans and specifications are, by this reference, made a part hereof. Nothing provided in this agreement with respect to said plans and specifications shall be construed or deemed to be a ratification or an adoption by the Railway of either or both said plans and specifications as its own.

III

The City and the Railway shall perform the various items of work as follows:

- I. WORK TO BE PERFORMED AND MATERIALS TO BE FURNISHED BY THE CITY OR ITS CONTRACTOR AT CITY EXPENSE.
  1. Except as otherwise herein provided, furnish all plans, engineering supervision, labor, material, supplies and equipment necessary for construction of the project.
  2. Do all grading of the roadway approaches to the crossing and furnish and place asphaltic concrete paving through the crossing, including between the rails.
  3. Provide all drainage structures under the roadway, if required.
  4. Furnish and place advance warning signs and standard pavement markings for railroad grade crossing.
  5. Perform all other work not specifically mentioned as work to be performed by the Railway, necessary to complete the project in accordance with the plans and specifications.
- II. WORK TO BE PERFORMED AND MATERIALS TO BE FURNISHED BY THE RAILWAY AT CITY EXPENSE
  1. Place 78 track feet of 112-lb. second hand welded rail replacing 90-lb, 44 new ties, place 30 cu. yds. processed ballast, and two standard reflectorized crossing signs.
  2. Engineering and Preparation of Bills - Perform preliminary and special engineering and inspection including field and office work and preparation of bills.
  3. Flagging as deemed necessary.

IV

All work herein provided for, to be done by the City, or its contractors on the Railway's right of way, shall be performed by the City or its contractors in a manner satisfactory to the Railway and shall be performed at such time and in such manner as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the Railway. The City or its contractors shall use all care and precaution necessary to avoid accident, damage or interference to the Railway's tracks or to the trains or traffic using its tracks and notify the Railway a sufficient time in advance whenever it is about to perform work adjacent to any track to enable the Railway to furnish flagging and such other protective services and devices as might be necessary to insure safety of railway operations, and the Railway shall have the right to furnish all such flagging or protective services and devices as in its judgment is necessary, and the City shall reimburse the Railway for the cost thereof. The Railway will submit bills for flagging and other protective services and devices currently during progress of the work contemplated by this agreement. The Railway will submit complete billing for flagging and other protective services and devices at the earliest practical date, and the City shall pay such bills promptly. Attached hereto, marked Exhibit "B", and by this reference made a part hereof, is a statement of conditions when flagmen and protective services and devices will be furnished by the Railway. Wherever the safeguarding of trains or traffic of the Railway is mentioned in this agreement, it is intended to cover and include all users of the Railway's tracks having permission for such use.

V

The parties hereto agree that the Railway will receive no ascertainable benefit from the project, and, consequently, no contribution will be required from the Railway toward the cost of said project.

VI

It is understood that Exhibit "C" attached hereto is a current estimate of the cost of the work to be performed by the Railway at City expense and is for information purposes only, and it is further understood that billings made by the Railway under the authority of this agreement will be on the basis of the actual cost of the work performed.

It is further agreed that a final and complete billing of all incurred actual costs of the work performed by the Railway, including labor, additives, materials, preliminary and construction engineering, preparation of bills and the cost of transportation of said materials, shall be made at the earliest practical date ascertained in accordance with the provisions of the Bureau of Public Roads' Policy and Procedure Memorandum No. 30-3 as amended. The City shall, upon presentation of final billings, promptly reimburse the Railway for the cost of the work included in this agreement. Preliminary engineering costs incurred subsequent to June 13, 1972, may be charged against the project.

#### VII

All contracts between the City and its contractor, for either the construction herein provided for or maintenance work on the highway within any easement area described herein or shown on the exhibits attached hereto, shall require the contractor to protect and hold harmless the Railway and any other railroad company, including National Railroad Passenger Corporation (AMTRAK), occupying or using the Railway's right of way or line of railroad against all loss, liability and damage arising from activities of the contractor, his forces, or any of his subcontractors or agents; and shall further provide that the contractor shall:

1. Furnish to the Railway a Railroad Protective Policy in the form provided by the Federal Highway Administration's Policy and Procedure Memorandum No. 20-12. The limits of said policy shall not be less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injury to or death of any one person and subject to that limit for each person a total of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injury to or death of two or more persons in any one accident; and not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of injury to or destruction of property in any one accident and subject to that limit for any one accident a total limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property during the policy period. Said insurance policy executed by a corporation qualified to write the same in the state in which the work is to be performed shall be in form and substance satisfactory to the Railway, and shall be delivered to and approved by the Railway prior to the entry upon or use of its property by the contractor.

2. Carry regular Contractor's Public Liability and Property Damage Insurance as specified in the Federal Highway Administration's Policy and Procedure Memorandum No. 20-12 providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of the bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000) for all damages to or destruction of property in any one accident and subject to that limit a total (or aggregate) limit of not less than One Million Dollars (\$1,000,000) for all damages to or destruction of property during the policy period. A certified copy of the policy providing said Contractor's Public Liability and Property Damage Insurance, executed by a corporation qualified to write the same in the state in which the work is to be performed, in form and substance satisfactory to the Railway, shall be delivered to and approved by the Railway prior to the entry upon or use of the Railway's property by the contractor.

If the City, its contractors, subcontractors or agents, in the performance of the work herein provided or by the failure to do or perform anything for which it is responsible under the provisions hereto, shall damage or destroy any property of the Railway, such damage or destruction shall be corrected by the City in the event its contractors or the insurance carriers fail to repair or restore the same.

#### VIII

The City, without expense of the Railway, shall secure from the owner or owners of that certain property lying adjacent to and outside of the Railway's right of way all necessary easements, permits, or other interest therein necessary for the occupancy and use of said property during the construction, maintenance and operation of the roadway and its appurtenances.

#### IX

Upon completion of the project, the City, at its sole cost and expense, shall maintain all improvements, other appurtenances, advance warning signs and standard pavement markings made or placed upon the Railway's right of way with the exception of the crossing which will be maintained by the Railway and the City as provided by law.

X

In case said road shall at any time cease to be used as a public road, or shall by operation of law become vacated or abandoned, the rights and benefits to the City under this agreement shall immediately cease, and the Railway shall be entitled to repossess the land to which it has executed easements and permits to the City, and to use the same thereafter as if this agreement had never been executed, without the necessity of any further legal proceedings.

XI

The City agrees that if, in the future, automatic crossing signals are to be installed or a grade separation is to be constructed, at said crossing, the expense of furnishing and installing said signals and of constructing said grade separation structure will be paid by the City.

XII

If the Railway enters into a contract or agreement with a contractor to perform any of the work, which the Railway is required to perform under the terms of this agreement by reason of the construction of the City's project, the Railway for itself, its assigns and successors in interest, agrees that it will not discriminate in its choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "D", attached hereto and made a part hereof, in any such contract or agreement.

XIII

This agreement shall inure to the benefit of and be binding on the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their proper officers thereunto duly authorized, the day and year first hereinabove written.

ATTEST:

\_\_\_\_\_ (Title)

CITY OF REDMOND, WASHINGTON

By \_\_\_\_\_

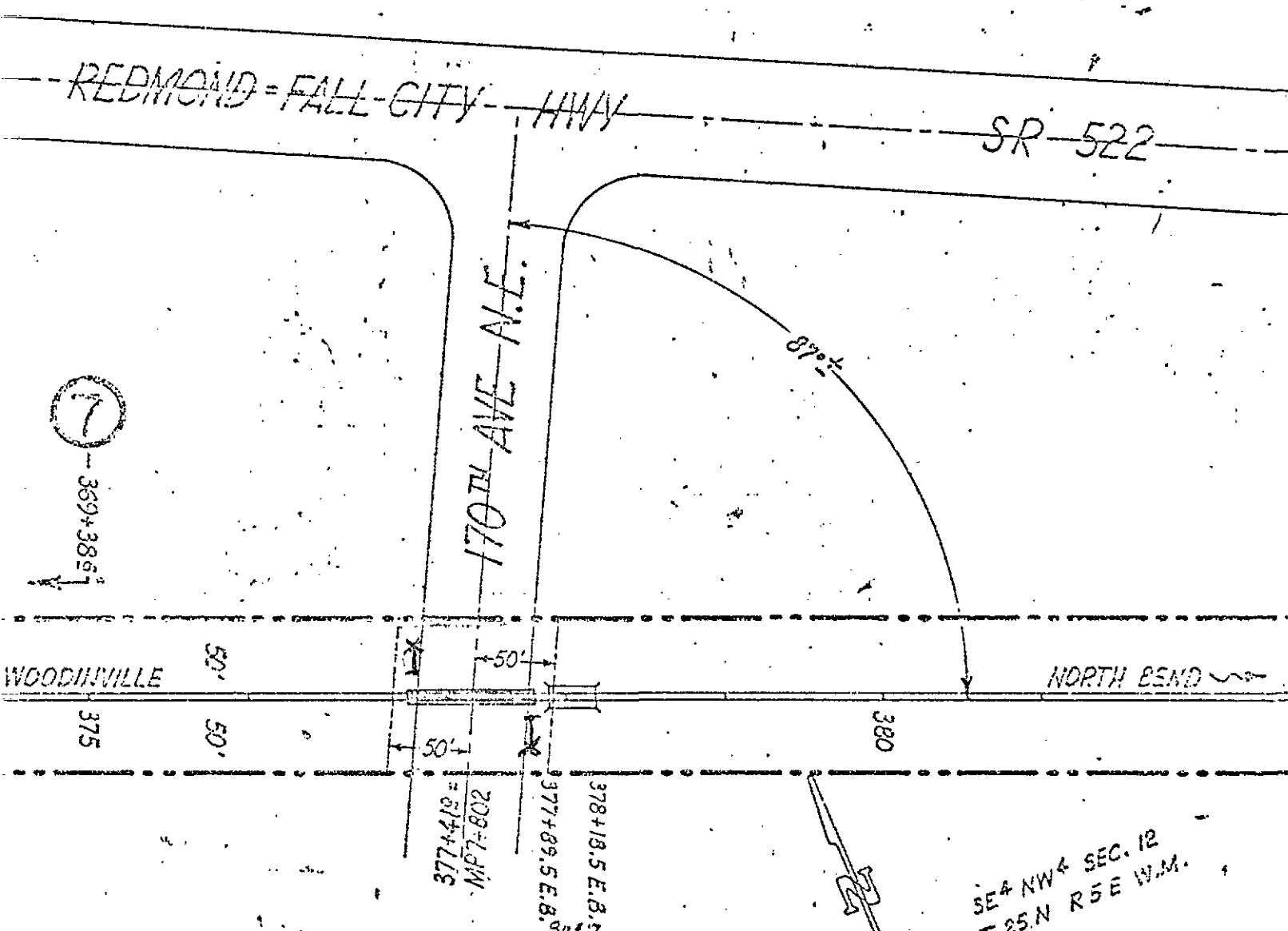
(Title)

BURLINGTON NORTHERN INC.

By \_\_\_\_\_

ASST. VICE PRESIDENT

\_\_\_\_\_ (Title)



- RELAY 78 T.F. 90° WITH 112° WELDED RAIL.
- PLACE 44 RENEWAL X-TIES.
- PLACE 30 C.Y. PROCESSED BALLAST.
- PLACE 2 STD. REFL. X-ing SIGNS.

SE 4 NW 4 SEC. 12  
T 25 N R 5 E W.M.

**EXHIBIT "A"**

**B.N.I.**  
 SEATTLE REGION WOODINVILLE TO NORTH BEND  
 REDMOND, WA.  
 TRACK IMPROVEMENTS ACC'T GRADE  
 CROSSING @ MP 7+802

SCALE 1"=100'  
 SEATTLE, WA.

MNGR. ENGR.

4-17-73

NEW WORK SHOWN: RED  
 EASEMENT " : GREEN



STATEMENT OF CONDITIONS WHEN FLAGMEN, PROTECTIVE SERVICES  
AND DEVICES WILL BE FURNISHED BY THE RAILWAY

Railway flagmen, protective services and devices will be furnished but not limited thereto for the following conditions:

- (1) When in the opinion of the Railway protection is necessary to safeguard the Railway's trains, engines, facilities and property.
- (2) When any work is performed over, under, or in close proximity to tracks or any Railway facilities.
- (3) When work in any way interferes with the operation of trains at usual speeds or threatens, damages, or endangers track or Railway facilities.
- (4) When any hazard is presented to Railway communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- (5) Where or when material is being hauled across tracks. Special clearance must be obtained from the Railway before moving heavy or cumbersome objects and equipment which might result in making the track impassable.

COST OF FLAGGING AND OTHER PROTECTIVE SERVICES AND DEVICES

(a) NUMBER	(b) CLASSIFICATION	(c) BASE PAY	(d) HEADQUARTERS
3	Sectionmen	\$5.00 per hour per 8 hour day plus additives	Woodinville, Wash.

NOTES:

- (a) A full flagging crew generally consists of three men. Under certain conditions more than three men may be required or a lesser number may be sufficient. However, additional personnel, such as communications linemen and/or signalmen may be used to protect communications and signal facilities, if deemed necessary by the Railway.
- (b) The Classification is shown solely for the prospective bidder's information, and there is no guarantee that the above classes of labor will actually be used or that the rates of pay shown in column (c) will be those in effect at the time the work is undertaken.
- (c) Shows base pay rate per man per hour for normal eight-hour shift in effect July, 1973.
- (d) Estimated costs for travel per employee from headquarters to job site and return is \$13.00 per round trip. The estimated daily cost for meals and other accommodation is \$ ----- per employee.
- (e) In addition, protective devices, such as crossing signals, indicators, teltales, lights, telephone, etc. may be required. In this connection teltales may be installed by the Railway, at its option, as a condition of its approval of any proposed restrictions of vertical clearance during construction to less than 22-1/2 feet.
- (f) It shall be the duty and responsibility of the State and its Contractors to notify the Railway's Division Superintendent at least forty-eight (48) hours in advance of when flagmen or other protective services and devices are required.

To all direct labor costs, there shall be additional charges for Vacation Allowance, Health and Welfare, Railroad Retirement and Unemployment Taxes; Public Liability, Property Damage and Workmen's Compensation Insurance; and accounting and billing. For estimating purposes only, these additives collectively may be considered as approximating 35 % of direct labor costs.

PACIFIC DIVISION

WOODINVILLE TO NORTH BEND

REDMOND

STATE OF WASHINGTON

VALUATION SECTION NO. 23 N

EXHIBIT "C"

Estimated cost to prepare track for 70-ft. paved crossing and place crossing signs for City of Redmond, Washington, at MP 7+802 per Exhibit "A".

<u>ESTIMATED COST</u>	<u>LABOR</u>	<u>NON-LABOR</u>
1. <u>Track and Crossing Work</u>		
Relay 78 T.F. with 112# welded replacing 90# including ties and fastenings and 30 cu. yds. ballast	\$405	\$980
Place 73 track feet, single flangeway rail move flanger sign & place 2 whistle posts	220	205
	20	15
Place 2 crossing signs	30	60
Freight		85
Equipment Rental		185
Material handling		70
Salvage		( 160 )
Subtotal without Labor Surcharges	\$675	\$1440
2. <u>Engineering and Preparation of Bills</u>		
Preliminary and special engineering and inspection including field and office work	50	
Preparation of bills	50	
Subtotal without Labor Surcharges	100	
3. <u>Flagging and Protective Services and Devices</u>		
Not estimated - To be billed per Exhibit "B"		
 <u>SUMMARY</u>		
1. Track and Crossing Work	675	1440.
2. Engineering and Preparation of Bills	100	--
3. Flagging and Protective Services and Devices	--	--
4. Liability Insurance \$1,000,000 coverage	--	85
	775	1526
5. Labor Surcharges:		
Superintendence, Vacation Pay, Paid Holidays, Railroad Retirement & Unemployment Insurance, Health & Welfare Benefits 31.215%	240	
	1015	1526
Contingencies	110	164
	1125	1690
State of Washington Use tax - 5.3% on new material		35
		1725
		1125
Total B/C vs. City of Redmond		2850

Office of Director Engineering  
 Burlington Northern Inc.  
 Seattle, Washington  
 July 13, 1973

EXHIBIT "D"  
APPENDIX A

Non-Discrimination Provisions of Title VI of the Civil Rights Act of 1964.

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 will comply with the Regulations of the Department of Commerce relative to nondiscrimination in federally-assisted programs of the Department of Commerce (Title 15, Code of Federal Regulations, Part 8, 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 after award and prior to completion of the contract work, will not discriminate on the ground 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 either directly or indirectly in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A-II 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 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 ground of race, color or national origin.
- (4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions 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 State Highway Department or the Bureau of Public Roads to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Bureau of Public Roads 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 Bureau of Public Roads 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 will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Bureau of Public Roads 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 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.