

**POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION**

RESOLUTION

MOTION: _____

RESOLUTION NO. 08-07-__

SECOND: _____

**OFFICIAL COMMISSION MEETING
JULY 17, 2008**

**RE: PROVISIONAL AUTHORIZATION FOR THE EXECUTIVE DIRECTOR
TO ENTER INTO AN AGREEMENT WITH THE VDRPT TO OPERATE
BUS SERVICE BETWEEN PRINCE WILLIAM COUNTY AND TYSON'S
CORNER**

WHEREAS, the Virginia Department of Transportation (VDOT) and the Virginia Department of Rail and Public Transportation (VDRPT) have been spearheading the effort to plan and implement a Congestion Management Program (CMP) to aid in minimizing the impact of increased traffic congestion during construction of beltway high occupancy toll (HOT) lanes; and

WHEREAS, among the Transit/Transportation Demand Management strategies recommended by VDOT/VDRPT and approved by the Steering Committee for funding is PRTC bus service between eastern Prince William County and the Tyson's Corner area; and

WHEREAS, CMP funds will cover PRTC's operating and capital expenses for an estimated three years; and

WHEREAS, funds to cover an additional year of operation through the estimated completion of the construction effort are currently being sought by VDOT; and

WHEREAS, a draft agreement between PRTC and VDRPT is under review and is expected to be substantially unchanged as a product of this review; and

WHEREAS, the authorization PRTC management is seeking is with two provisos: (1) that the final version of the agreement is substantially the same as the draft; and (2) the final version is deemed acceptable for execution by PRTC Legal Counsel; and

ITEM 12-B.1

(18 PAGES)

WHEREAS, while service between eastern Prince William and Tyson's Corner (assuming completion of HOV/HOT lanes) has been included in both long-range and strategic plans adopted by the Commission, entering into this agreement in no way commits PRTC to continue operating service to Tyson's Corner if and when external funding ceases; and

WHEREAS, companion provisional resolutions for the purchase of four buses and four fareboxes for this service are included in this month's Commission agenda.

NOW, THEREFORE, BE IT RESOLVED that the Potomac and Rappahannock Transportation Commission does hereby authorize the Executive Director to enter into an agreement with VDRPT to operate the Tyson's Corner route provided that the "Tyson's service agreement" in its final form is substantially the same as the draft and provided further that it is deemed acceptable for execution by the PRTC Legal Counsel.

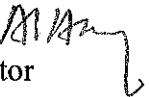


Potomac and Rappahannock
Transportation Commission

14700 Potomac Mills Road
Woodbridge, VA 22192

July 17, 2008

TO: Chairman Jones and Commissioners

FROM: Alfred H. Harf 
Executive Director

RE: Provisional Authorization for the Executive Director to Enter into an Agreement with the Virginia Department of Rail and Public Transportation (VDRPT) to Operate Bus Service between Prince William County and Tyson's Corner

Recommendation:

Provisionally authorize the Executive Director to enter into an agreement with the Virginia Department of Rail and Public Transportation (VDRPT) to operate bus service between Prince William County and Tyson's Corner.

Background:

The Virginia Department of Transportation (VDOT) and the Virginia Department of Rail and Public Transportation (VDRPT) have been spearheading the effort to plan and implement a Congestion Management Program (CMP) to aid in minimizing the impact of increased traffic congestion during construction of beltway high occupancy toll (HOT) lanes. Among the Transit/Transportation Demand Management strategies recommended by VDOT/VDRPT and approved by the Steering Committee for funding is PRTC bus service between eastern Prince William County (likely beginning at the recently-expanded Lake Ridge commuter lot or at the Rt. 123/I-95 commuter lot) and the Tyson's Corner area (a task-order consultant will be engaged by VDRPT to analyze and recommend origin and destination routing which may include an intermediate bus stop in Springfield).

Envisioned is premium service with four trips in both the AM and PM peak periods using new buses equipped with wi-fi (wireless internet) to further enhance the bus versus car traveling experience. CMP funds will cover PRTC's operating and capital expenses for an estimated three years; funds to cover an additional year of operation through the estimated completion of the construction effort are currently being sought by VDOT.

Chairman Jones and Commissioners

July 17, 2008

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The attached draft agreement between PRTC and VDRPT is a modified version of the agreement PRTC entered into in 1999 to perform similar services targeted at relieving congestion during the "Mixing Bowl" reconstruction effort (PRTC's supplemental services were among the most successful strategies employed). The Commission is being asked to authorize the Executive Director to enter this agreement provided that the "Tysons service agreement" in its final form is substantially the same as the draft appearing here and is deemed acceptable for execution by the PRTC Legal Counsel. Companion provisional resolutions for the purchase of four buses and four fareboxes for this service are included in this month's Commission agenda.

While service between eastern Prince William and Tysons (assuming completion of HOV/T lanes) has been included in both long-range and strategic plans adopted by the Commission, entering into this agreement in no way commits PRTC to continue operating service to Tyson's Corner if and when external funding ceases.

Fiscal Impact:

None; capital and operating costs associated with this new service will be fully funded sources external to the PRTC budget.

Attachment: As stated

AGREEMENT
FOR THE USE OF
FEDERAL HIGHWAY ADMINISTRATION
INTERSTATE MAINTENANCE
PROJECT FUNDS
FISCAL YEAR _____

FEDERAL PROJECT: _____
STATE PROJECT: _____

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

Section Number and Description

Introduction

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- 2 Local Share
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- 12 Compliance with Title VI of the Civil Rights Act of 1964
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Appendix A Project Scope of Work and Budget

Appendix B Restrictions, Prohibitions, Controls and Labor Provisions

Appendix C Title VI

Appendix D Audit Guidelines

THIS AGREEMENT made this __ day of ____, 2008, between the Commonwealth of Virginia (hereinafter referred to as the COMMONWEALTH) acting by and through the Virginia Department of Rail and Public Transportation (hereinafter referred to as the DEPARTMENT) and the Potomac and Rappahannock Transportation Commission (hereinafter referred to as the PUBLIC BODY),

WHEREAS, the purpose of this AGREEMENT is to award a grant of Federal assistance to the PUBLIC BODY for specific I-495 Capitol Beltway High Occupancy Toll Lane Construction Congestion Management Plan activities;

WHEREAS, the PUBLIC BODY desires to secure and utilize grant funds for these purposes;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the DEPARTMENT AND the PUBLIC BODY agree as follows:

SECTION 1: Purpose and Source of Funds

Under the provisions of the Intermodal Surface Transportation Efficiency Act of 1991 and the Transportation Equity Act for the 21st Century, Federal Highway Administration funds are available to the COMMONWEALTH for use in the I-495 Capitol Beltway High Occupancy Toll Lane Construction Congestion Management Project. Federal and Local Share funds and shall be provided and made available to the PUBLIC BODY to carry out the work activities described in the approved project scope of work incorporated in Appendix A and contained in the approved Transportation Improvement Plan of the COMMONWEALTH and the urbanized area of which the PUBLIC BODY is a part.

SECTION 2: Local Share

The local share required to fund the activities described in Appendix A of this AGREEMENT will be provided by the Virginia Department of Transportation. The Project Budget is included as part of Appendix A.

SECTION 3: Project Budget

The PUBLIC BODY shall maintain a project budget, which shall be the latest budget approved by the DEPARTMENT pursuant to request by the PUBLIC BODY, as an element of Appendix A. The PUBLIC BODY shall incur obligations against and make disbursements of the Project funds in conformity with the latest approved budget for the Project. Indirect costs are an allowable expense if they are based on a cost allocation plan which has been approved by the DEPARTMENT.

In no event shall the DEPARTMENT be liable to the PUBLIC BODY for any portion of the project cost except to pass through the FEDERAL and LOCAL SHARES to the PUBLIC BODY. The DEPARTMENT'S responsibility for the project cost shall be limited to the cost of coordination and processing of the PUBLIC BODY'S reimbursement requests.

SECTION 4: Changes

Unless specifically stated otherwise in this AGREEMENT, the DEPARTMENT may at any time, with reasonable advance written notice, make any changes in the AGREEMENT which may either increase or decrease the scope of work found in APPENDIX A. If such changes cause an increase or decrease in the cost or time required for performance of the work, an equitable adjustment shall be made and this Agreement shall be modified by a Supplemental Agreement between the DEPARTMENT and the PUBLIC BODY prior to implementation of such service. The Supplemental Agreement shall set forth the proposed changes in services and adjustment of the compensation to be paid to the PUBLIC BODY, if any.

The PUBLIC BODY may request changes in the scope of work to be delivered. Such changes may or may not increase the amount of the PUBLIC BODY'S compensation. Changes must be mutually agreed upon in writing by and between the DEPARTMENT and the PUBLIC BODY. These changes and the written concurrences shall become amendments to this AGREEMENT.

SECTION 5. Time of Performance

The PUBLIC BODY will make requests to the DEPARTMENT for payment of allowable costs to the extent that they meet all of the requirements set forth below:

- A. Be made in conformance with the enclosed Appendix A and all other provisions of this AGREEMENT;
- B. Be necessary in order to accomplish the activities in the approved AGREEMENT;
- C. Be reasonable in amount for the goods and services purchased;
- D. Be actual net costs to the PUBLIC BODY (i.e., the price paid minus any refunds, rebates, or other items of value received by the PUBLIC BODY which have the effect of reducing the cost actually incurred);
- E. Be in accordance with DEPARTMENT audit policies and procedures which conform to Office Management and Budget Circular A-133, as noted in Appendix D.
- F. Indirect costs are an allowable expense if they are based on a cost allocation plan which has been approved by the DEPARTMENT.

The DEPARTMENT will honor requests for payment in the manner set forth in this section. In order to receive payments, the PUBLIC BODY must submit all of the following:

1. Submit to the DEPARTMENT a certified request for payment in a form acceptable to the DEPARTMENT.
2. Submit to the DEPARTMENT a statement of expenses incurred in a form acceptable to the DEPARTMENT.
3. Submit to the DEPARTMENT requests for payment no more frequently than once per month unless prior authorization for more frequent payments has been granted by the DEPARTMENT.

The PUBLIC BODY shall maintain for a period of three years from the date of final payment using generally accepted accounting procedures all books, documents, papers, accounting records and other evidence supporting costs incurred during the project. This information will be subject to an audit acceptable to the DEPARTMENT, at the DEPARTMENTS expense, within the three year record retention period.

SECTION 7: Reports and Documents

The PUBLIC BODY shall provide the DEPARTMENT and the Virginia Department of Transportation (VDOT) quarterly reports regarding the progress of the project as described in Appendix A. The PUBLIC BODY shall submit to the DEPARTMENT, at such time as is

required, financial statements, data, records, contracts, and other documents related to the program as may be deemed necessary by the DEPARTMENT.

SECTION 8: Termination

The DEPARTMENT reserves the right to terminate the project and cancel this AGREEMENT in whole or in part at any time by written notice to the PUBLIC BODY no later than forty-five (45) days before the effective date of such termination for any of the following reasons:

- (1) The PUBLIC BODY discontinues the use of such vehicles, equipment, or facilities during their useful lives for the purpose of providing the services defined in Appendix A of this AGREEMENT.
- (2) The PUBLIC BODY takes any action pertaining to this AGREEMENT without the approval of the DEPARTMENT and which under this AGREEMENT would have required the approval of the DEPARTMENT.
- (3) The commencement, prosecution or timely completion of the Project by the PUBLIC BODY IS, for any reason, rendered improbable, impossible or illegal.
- (4) The PUBLIC BODY shall be in default under any provision of this AGREEMENT.
- (5) Termination or reduction of federal funds for this program.

Upon termination of the Project and cancellation of this AGREEMENT under the provisions of this Article, the PUBLIC BODY agrees to cease all actions which may result in further charges or liability under this AGREEMENT.

SECTION 9: Contracts of the PUBLIC BODY

The PUBLIC BODY contracts with a third party (currently First Transit) for the operation of transit services and maintenance of capital equipment. Unless authorized in writing by the DEPARTMENT, the PUBLIC BODY shall not assign any other portion of the work to be performed under this AGREEMENT, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any other third party with respect to its rights and responsibilities under this AGREEMENT without prior written consent of the DEPARTMENT and the Federal Highway Administration.

SECTION 10: Liability Waiver

The PUBLIC BODY shall not seek redress for damages or injury caused in whole or in part by the COMMONWEALTH, the DEPARTMENT or their offices, agents or employees acting within the scope of their duties.

The PUBLIC BODY is covered by and will keep in force an insurance policy from the Department of Risk Management, or its equivalent, which protects the COMMONWEALTH, the DEPARTMENT and their officers, agents, and employees against damage or injury caused by the negligence of the PUBLIC BODY, its officers, agents or employees which arise from their use of funds provided under this AGREEMENT.

SECTION 11: Restrictions, Prohibitions, Controls, and Labor Provisions

The PUBLIC BODY shall comply with all of the restrictions, prohibitions, controls, and labor provisions as set forth in Appendix B, and made a part of the AGREEMENT by reference.

SECTION 12: Compliance with Title VI of the Civil Rights Act of 1964

The PUBLIC BODY shall comply with the provisions of Title VI of the Civil Rights Act of 1964, as set forth in Appendix C, and made a part of the AGREEMENT by reference.

SECTION 13: Environmental Protection

The PUBLIC BODY shall ensure in the purchase and use of equipment or the construction and use of facilities that compliance is maintained with all applicable standards, orders, or requirements issued under Section 306 of the Clear Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the Federal Highway Administration and to the U.S.E.P.A. Assistant Administrator for Enforcement.

SECTION 14: Incorporation of Provisions

All covenants and provisions of this AGREEMENT shall be expressly made a part of any subcontracts executed by the PUBLIC BODY, and shall be binding on the subcontractors, its agents and employees.

SECTION 15: Special Provisions

(a) Special Condition Pertaining to Financing the I-495 Capitol Beltway High Occupancy Toll Lane Construction Congestion Management Plan activities. Sufficient funds must be available to the DEPARTMENT from the United States Department of Transportation and an adequate liquidating cash appropriation must have been enacted into law before payments may be made to the PUBLIC BODY under this AGREEMENT.

(b) All funds made available by this AGREEMENT are subject to audit by the DEPARTMENT or its designee, and by the Federal Highway Administration or its designee. Current audit guidelines for the DEPARTMENT are set forth in Appendix D, and made a part of this AGREEMENT by reference.

IN WITNESS WHEREOF, the DEPARTMENT, acting by and for the COMMONWEALTH, and the PUBLIC BODY have caused this AGREEMENT to be executed by their respective officials, thereunto duly authorized.

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

BY: _____ WITNESS: _____
DIRECTOR

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

BY: _____ WITNESS: _____
(NAME AND TITLE)

Appendix A: Project Scope of Work and Budget

PRTC Congestion Management Program (CMP) Bus Service

During I-495 Capitol Beltway High Occupancy Toll (HOT) Lane Construction

As part of the Congestion Management Plan (CMP) for the I-495 Capital Beltway HOT Lanes construction project, PRTC will introduce new commuter bus service between the Woodbridge area and Tysons Corner. Details of the service, evaluation program and estimated budget are included below.

Service Level

PRTC will operate four new weekday trips in the morning and evening peak periods at approximately 45-minute intervals. The total number of weekday daily trips is eight. To enhance service attractiveness buses will be equipped with a wi-fi system to afford customers the opportunity to have wireless internet access while traveling.

Routing

On the local end, buses will serve the Woodbridge area. Trips will access the High Occupancy Vehicle (HOV) lanes near their southern starting point, proceed along I-95 to the Capital Beltway, and then serve the Tysons Corner area. Buses may serve an intermediate stop near Springfield. Exact routing and bus stops will be mutually agreed-upon by PRTC and the Department of Rail and Public Transportation (DRPT).

PM trips will follow reverse routing from the AM trips.

Evaluation

An evaluation of the service detailed above will be conducted after the service has been in operation for no less than one year. PRTC will cooperate with DRPT and the Virginia Department Transportation (VDOT) in monitoring and evaluating this congestion management strategy. PRTC will provide DRPT and VDOT with quarterly reports that include ridership counts for the new service discussed as well as system ridership counts on a monthly basis. PRTC will advise DRPT and VDOT on the probable reasons for and impacts of ridership changes.

Budget

PRTC will receive full funding to operate the service for a period of approximately three (3) years. Funding shall be net of passenger fare revenue; unless mutually agreed upon by PRTC and DRPT fares charged shall mirror those charged for similar PRTC services; estimated costs include a 50 percent fare discount for the first one-half year of service operation. It is understood by all parties that expenses are estimated and that actual expenses will vary depending on many factors including but not limited to: actual routing; actual number of service hours and days operated; actual cost of service and fuel; actual passenger revenue received, etc. Should

appropriated funds not be sufficient to cover full operating and capital expenditures, PRTC shall, in cooperation with DRPT, make service adjustments to reduce expenses. Neither PRTC nor its member jurisdictions shall be liable for any expense not covered by funds provided by DRPT. In the event that state funding to sustain the route is unavailable and PRTC is not in the position to assume the ongoing subsidy required, PRTC shall return the buses purchased with Tyson's CMP funding to the Virginia Department of Rail and Public Transportation as consideration for the residual life of the buses. The return of said buses to the state shall constitute PRTC's only obligation to the state in the event that the service does not continue for as long as the expected life of the buses. DRPT may, at its discretion, allow PRTC to maintain ownership of any or all of the buses, provided PRTC uses them to operate sanctioned public transit services. The estimated project budget from FY2010 through FY2012 is detailed below.

Project Budget
 VDOT Project # _____
 DRPT Project # _____

FY2010 – FY2012	
Expense Description	Total Cost
Bus Acquisition including fareboxes, radios, wi-fi, etc.	\$1,926,120
Operating Expenses, net of estimated passenger fare revenue	\$1,188,472
Total	\$3,114,592
Federal Share (80%)*	\$2,491,673.60
Local Share (20%)*	\$622,918.40
Total	\$3,114,592

*The federal and local share will be provided by the Virginia Department of Transportation

Appendix B: Restrictions, Prohibitions, Controls, and Labor Provisions

(a) The PUBLIC BODY, its agents, employees, assigns, or successors, and any persons, firms, or agency of whatever nature with whom it may contract or make agreement, in connection with this Agreement, shall not discriminate against any employee or applicant for employment because of age, race, religion, handicap, color, sex, or national origin. The PUBLIC BODY shall take affirmative action to insure that applicants are employed and that employees are treated during their employment, without regard to their age, race, religion, handicap, color, sex, or national origin. Such actions shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) Disadvantaged Business Enterprises and Women's Business Enterprises. The PUBLIC BODY shall be responsible for meeting the applicable regulations regarding participation by Disadvantaged Business Enterprises (DBE) and Women's Business Enterprises (WBE) in Department of Transportation programs set forth at 49 C.F.R. Part 23, 45 F.R. 21172 C.F.R. 23.43; the following clauses must be inserted in each third party contract:

- (1) IT IS THE POLICY OF THE DEPARTMENT OF TRANSPORTATION THAT DISADVANTAGED BUSINESS ENTERPRISES, AS DEFINED IN 49 C.F.R. PART 23, SHALL HAVE THE MAXIMUM OPPORTUNITY TO PARTICIPATE IN THE PERFORMANCE OF CONTRACTS FINANCED IN WHOLE OR IN PART WITH FEDERAL FUNDS UNDER THIS AGREEMENT. CONSEQUENTLY, THE DBE REQUIREMENTS OF 49 C.F.R. PART 23 APPLY TO THIS AGREEMENT.
- (2) DBE/WBE OBLIGATION. THE RECIPIENT OR ITS CONTRACTORS AGREE TO ENSURE THAT DISADVANTAGED BUSINESS ENTERPRISES AS DEFINED IN 49 C.F.R. PART 23 HAVE THE MAXIMUM OPPORTUNITY TO PARTICIPATE IN THE PERFORMANCE OF CONTRACTS AND SUBCONTRACTS FINANCED IN WHOLE OR IN PART WITH FEDERAL FUNDS PROVIDED UNDER THIS AGREEMENT. IN THIS REGARD ALL GRANTEEES, RECIPIENTS, AND CONTRACTORS

SHALL TAKE ALL NECESSARY AND REASONABLE STEPS IN ACCORDANCE WITH 49 C.F.R. PART 23 TO ENSURE THAT DISADVANTAGED BUSINESS ENTERPRISES HAVE THE MAXIMUM OPPORTUNITY TO COMPETE FOR AND PERFORM CONTRACTS. GRANTEES, RECIPIENTS, AND THEIR CONTRACTORS SHALL NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN OR SEX IN THE AWARD AND PERFORMANCE OF DOT-ASSISTED CONTRACTS.

If, as a condition of assistance, the PUBLIC BODY has submitted and the PROJECT SPONSOR has approved a disadvantaged business enterprise affirmative action program which the PUBLIC BODY agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the PUBLIC BODY of its failure to carry out the approved program, the PROJECT SPONSOR shall impose such sanctions as noted in 49 C.F.R. Part 23, Subpart E, which sanctions may include termination of the AGREEMENT or other measures that may affect the ability of the PUBLIC BODY to obtain future DOT financial assistance.

(c) Interest of Member of, or Delegates to, Congress. No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this AGREEMENT or to any benefit arising therefrom.

(d) Conflict of Interest. The PUBLIC BODY and its officers and employees shall comply with the provisions of the State and Local Governments Conflicts of Interest Act (§2.1-639.1 of the Code of Virginia (1950), as amended, et seq.), the terms of which are incorporated herein by reference.

(e) The PUBLIC BODY, its agents, employees, assigns, or successors, and any persons, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Virginia Fair Employment Contracting (§2.1-374 et seq. of the Code of Virginia (1950), as amended), the terms of which are incorporated herein by reference.

Appendix C: Title VI of the Civil Rights Act of 1964

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

- (1) Compliance with Regulations: The PUBLIC BODY shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT"), 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 PUBLIC BODY, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 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 PUBLIC BODY for work to be performed under a subcontract, including procurements of materials or leases or equipment, each potential subcontractor or supplier shall be notified by the PUBLIC BODY of the PUBLIC BODY's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.
- (4) Information-Reports: The PUBLIC BODY shall provide all information and reports developed as a result of or 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 DEPARTMENT or Federal Highways Administration (FHWA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a PUBLIC BODY is in the exclusive possession of another who fails or refuses to furnish this information, the PUBLIC BODY shall so certify to the DEPARTMENT or the Federal Highways Administration, as appropriate, and shall set forth the efforts it has made to obtain this information.
- (5) Sanctions for Noncompliance: In the event of the PUBLIC BODY's noncompliance with the nondiscrimination provisions of this Contract, the DEPARTMENT shall impose such

contract sanctions as it or Federal Highways Administration may determine to be appropriate, including but limited to:

- (a) Withholding of payments to the PUBLIC BODY under the Contract until the PUBLIC BODY complies; and/or
 - (b) Cancellation, termination, or suspension of the Contract in whole or in part.
- (6) Incorporation of Provisions: The PUBLIC BODY shall include the provisions or paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The PUBLIC BODY shall take such action with respect to any subcontract or procurement as the DEPARTMENT or the Federal Highways Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a PUBLIC BODY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the PUBLIC BODY may request the DEPARTMENT to enter such litigation to protect the interest of the United States.