

RESOLUTION #89

A RESOLUTION AUTHORIZING AN AGREEMENT WITH OREGON ELECTRIC RAILWAY (BURLINGTON NORTHERN) FOR CONSTRUCTION AND MAINTENANCE OF MAIN STREET (WILSONVILLE ROAD) CROSSING IMPROVEMENT PROJECT

The City of Wilsonville resolves to enter into an agreement between the City and Oregon Electric Railway (Burlington Northern) for construction of Main Street (Wilsonville Road) crossing improvement according to the terms and provisions of an "AGREEMENT", a copy of which is attached hereto marked Exhibit "A" for identification purposes and by this reference and attachment is expressly made part of the Resolution.

WHEREBY, this resolution expressly authorizes the mayor of the City of Wilsonville to execute said agreement on behalf of the City.

Adopted by the Wilsonville City Council at a regular meeting, thereof, on Aug 1, 1977.

Attest:

Deborah Sporn

William G. Lowrie
William G. Lowrie, Mayor

CONSTRUCTION AND MAINTENANCE AGREEMENT
MAIN STREET CROSSING IMPROVEMENT PROJECT
WILSONVILLE, OREGON
PORTLAND DIVISION, EIGHTH SUBDIVISION

THIS AGREEMENT, made this day of
1976, between the CITY OF WILSONVILLE, a municipal corporation
of the STATE OF OREGON, hereinafter called the "City", and
OREGON ELECTRIC RAILWAY COMPANY, an Oregon corporation,
hereinafter called the "Railway";

WITNESSETH:

WHEREAS, in the interests of aiding motor vehicular
traffic and public safety, the City proposes to widen and
reconstruct the traveled portion of Main Street from a width
of 24 feet to a width of 48 feet, plus 4-foot sidewalks where
it crosses the Railway's main track at milepost 42.6 of the
Railway's eighth subdivision in Wilsonville, Oregon, as
shown on Exhibit "A", attached hereto and by this reference
made a part hereof; and

WHEREAS, in connection with said project it will
be necessary for the Railway to perform certain work on its
track facilities; and to install automatic flashing light
signals, cantilever arms and short arm gates, as shown on
Exhibit "A", hereinafter referred to as "signals". The
Railway is agreeable to performing the work as hereinafter
provided for the convenience of the City; and

WHEREAS, the City is willing to undertake con-
struction of said project with appropriate City funds and
with such other funds as may be available for this purpose
from the Grade Crossing Protection Account established under
and pursuant to the provisions of Oregon Revised Statute
763.270, and the Railway is willing to consent to the
execution of the City's project upon the terms and conditions
herein stated, and not otherwise;

NOW, THEREFORE, in consideration of the mutual
covenants herein contained, the parties agree as follows:

I

No additional easements will be required at this
time at this location due to improvement of the crossing.

II

The required signal and track work shall be
performed in accordance with plans and estimates prepared by
the Railway.

III

The City shall furnish to the Railway's Portland-
Seattle Region Director, Engineering, for his information,
plans and specifications for said improvement of Main Street,
and no work pursuant to said plans and specifications shall
be performed on the right of way of the Railway prior to

receipt of notice to proceed given by the said Director, Engineering to the City's Director of Public Works or his authorized representatives. 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.

IV

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

PART I - WORK TO BE PERFORMED BY 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, including all grading and drainage work.
2. Furnish and place all advance warning signs and pavement markings.
3. Perform all work not specifically mentioned as work to be performed by the Railway necessary to complete the project.

PART II - WORK TO BE PERFORMED BY RAILWAY AT 100% CITY EXPENSE:

1. Perform preliminary engineering as well as inspection in the field during construction.
2. Perform flagging and furnish protective services and devices during construction as deemed necessary by the Railway.

PART III- WORK TO BE PERFORMED BY THE RAILWAY COST TO BE DIVIDED CITY 57% AND RAILWAY 43%:

1. Rehabilitate and resurface track through crossing.
2. Furnish and place asphalt paving in crossing area.

PART IV - WORK TO BE PERFORMED BY RAILWAY COST TO BE DIVIDED 75% STATE GRADE CROSSING PROTECTION ACCOUNT, 20% RAILWAY AND 5% CITY.

Install automatic flashing light cantilever signals with gates.

V

The estimated cost of work (other than that for flagging and other protective services and devices for the account of the City and its contractors) to be performed by the Railway at City expense is as shown on detailed estimate attached hereto and marked Exhibit "C" and by this reference made a part hereof.

Progress bills may be submitted by the Railway to the City during the progress of the work included in this agreement on the basis of the Railway's engineer's estimate of percentage of completion of the work shown on Exhibit "C" and the City will pay such bills promptly, subject to withholding as hereinafter provided.

It is agreed, in connection with the progress bills for the work performed by the Railway in connection with the agreement, ten percent (10%) of the amount claimed may be withheld by the City until the final and complete billing of all incurred costs has been audited and approved for payment, at which time the total amount allowed to be due the Railway, including the amounts withheld from progress billing in connection with said project, will be paid by the City.

Upon completion of the signal installation, the Railway shall submit final billing to both the City and the Public Utility Commissioner of Oregon, for this portion of the work in accordance with Oregon Public Utility Commissioner of Oregon Order No. 76-596 dated September 1, 1976, directing participation of the Grade Crossing Protection Account in the amount of seventy-five percent (75%) of the costs and the City in the amount of five percent (5%) of the costs.

It is further agreed that a final and complete billing of all incurred costs shall be made by the Railway at the earliest practical date and that a final audit will be made by the City as soon after the billing as practicable.

VI

All work herein provided to be done by the City or its contractor on the Railway's right of way shall be done 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 shall require its contractor to use all care and precaution necessary to avoid accident or damage to or interference with the Railway's tracks or trains, and to notify the Railway a sufficient time in advance whenever the contractor is about to perform work on or adjacent to the right of way and tracks to enable the Railway to furnish flagging and such other protective services as might be necessary to insure the safety of the Railway's operations.

The Railway shall have the right to furnish all such flagging and protective services as in their judgment may be necessary to insure safety of the Railway's operations, consistent, however, with what is reasonable and necessary under the circumstances, and the City shall reimburse the Railway for the cost thereof. Whenever safeguarding of the trains or traffic of the Railway is mentioned in this agreement, it is intended to cover and includes all users of the Railway's tracks having permission for such use. The Railway will submit their 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 within one hundred and twenty (120) days after completion of the project, provided the City advises the Railway of the commencement of the one hundred and twenty (120) day period by notifying the Railway of the completion of the project. Attached hereto and marked Exhibit "B" and by this reference made a part hereof, is a statement of conditions when flagmen, protective services and devices will be furnished by the Railway.

VII

The Federal Highway Administration's Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 3, determines and establishes the definitions and applicable standards for this agreement and payment hereunder, and said manual is incorporated herein by reference and made a part hereof to the extent applicable as if fully set forth herein.

VIII

All contracts between the City and its contractor, for the construction herein provided for 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 sub-contractors 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 Federal-Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 2. 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 Federal-Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 2, 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 hereof, 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.

IX

Upon completion of the installation of said signals, the Railway at its sole cost and expense shall thereafter operate and maintain the said signals in a proper condition; provided, however, that in the event of the passage of a law by the State of Oregon providing for the apportionment of the cost of maintenance of existing grade crossing signals, the Railway shall have the advantage and benefit of such law. The City shall maintain the advance warning signs and pavement markings.

X

~~In the event one, or more than one, of the signals installed at this railway-roadway grade crossing under this agreement are partially or wholly destroyed and its or their replacement value, or cost of repairing, cannot be recovered from the person or persons responsible for such destruction,~~

SA then, in that event fifty percent (50%) of the cost of repair or replacement in kind of one, or more than one, of the signals shall be borne by the City, and fifty percent (50%) by the Railway.

XI

In the event one, or more than one, of the signals installed under this agreement cannot, through age, be maintained, or by virtue of their obsolescence require replacement, then in either of these events the cost of installation of a new signal or signals shall be negotiated by the parties hereto, unless funds are available from the Oregon State Grade Crossing Protection Account.

XII

In the event the City shall at any time in the future deem it necessary by virtue of realignment or widening of said Street, or by reason of any other street improvement require that one or all of the signals be removed to a new location, rearranged or altered at said intersection, then the City shall bear the entire cost of such relocation, rearrangement or alteration. In like manner, if the revisions are required by reason of change made by the Railway, then the Railway shall bear the cost thereof.

XIII

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 terms of this agreement by reason of the construction of the City's project, the Railway for itself, its assigns or successors in interest, agrees that it will not discriminate in the 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.

XIV

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

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

ATTEST:

Deanna J. Shaw
5/2/77 CITY RECORDER

CITY OF WILSONVILLE

By: *William G. Lourie*
MAYOR -

OREGON ELECTRIC RAILWAY COMPANY

By: *R. H. Shaw*
VICE PRESIDENT

73+012 End of Fence 25' L.

73+102 N. End 10' 69' Empty Plat. 18' L.

73+882 End of Fence 25' L.

73+512 H. B. 9' 8" 9' 8" 9'

73+182 & Sheffield Corp. Guard.

73+302 R.W.

73+102 Crossing Street 12' L.

W.M. "M.I.V.-S.E.T.-E.C. 238"

NW Nat Gas Co. 4" U.G. Gas Pipe Xing

W.M. "M.I.V.-S.E.T.-P. 235"

72+702 R.W.

72+032 & Sheffield Corp. Guard.

D. L. C. LINE

Per. #O.E. 3145 to The Wickes Corp'n. for 10" U.G. water line 9-1-73

Permit #O.E. 3163 to Gen. Tel. Co. for a 380'± lateral O.H. wire 12-16-73

Install automatic flashing light 22' cantilever signals with 28' gates.

73+372 N. End 8' 12' Platform.

73+162 End of Fence 25' L., R.

73+112 Underground Wire Crossing. (1" #42-66 #42-22-24)

73+102 8" Cor. L.P. 25' L.

U.C. Order #74-637-8-27-74-flashing lights and gates

73+002 MAIN ST

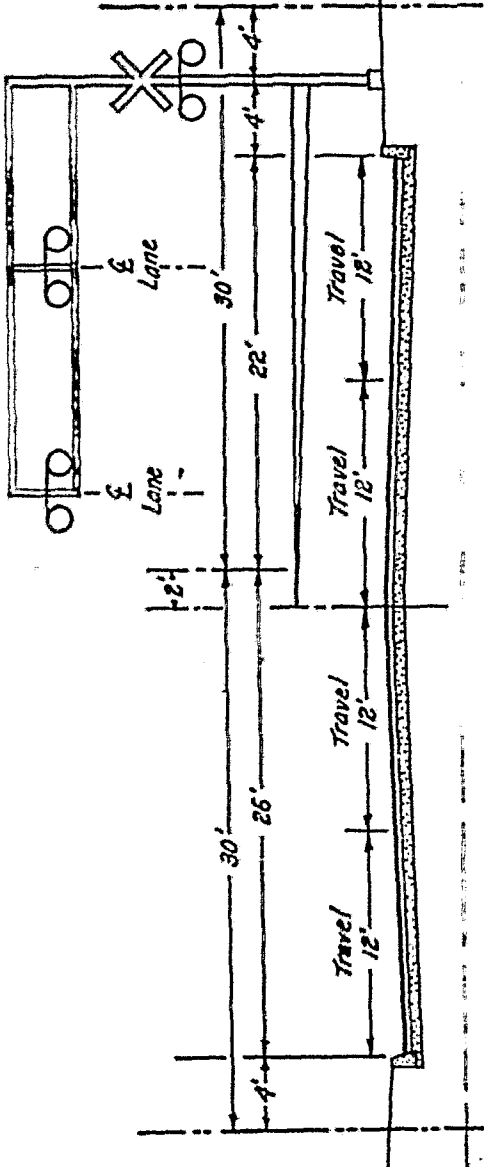
72+922 ± 18' B.T. Road Crossing

No. 58-315 S.

72+692 End of Fence 25' L., R.

Widen existing 24' crossing to 56' wide (includes two 4' sidewalks)

Revise communication facilities as required.



SECTION "A"-A" LOOKING EASTERLY

SCALE: 1"=10'



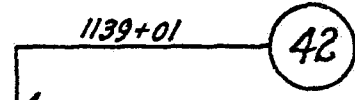
Exhibit A

OREGON ELECTRIC RAILWAY CO.
 BURLINGTON NORTHERN INC.
 PORTLAND DIVISION 8TH SUB. DIV.

Widen crossing, install automatic flashing light cantilever signals with gates at Newberg-Wilsonville Road crossing - WILSONVILLE, OREGON
 DIRECTOR, ENGINEERING

SCALE 1"=100' DATE 9-21-76
11-12-76

67+671 18' Gates 25' L., R.



To Eugene

To Portland

Pacific

EXHIBIT "C"

Estimated cost to rehabilitate and widen Main Street,
Wilsonville, Oregon. Install automatic flashing light
cantilever signals with gates.

	<u>Labor</u>	<u>Non-Labor</u>
PART I - <u>Work to be performed by City or its contractor at City expense.</u> Not Estimated		
PART II - <u>Work to be performed by Railway at 100% City expense.</u>		
1. <u>Engineering</u> Perform preliminary engineering	50	
Engineering inspection in the field during construction	100	
Equipment rental		25
	<u>150</u>	<u>25</u>
2. <u>Perform Flagging</u> and furnish protective services and devices during construction as deemed necessary by the Railway		Not estimated
3. <u>Accounting</u> Preparation of bills	6	
4. <u>Liability Insurance</u> \$1,000,000 coverage @ \$12/100 of payroll		12
5. <u>Labor Surcharges</u> Vacation pay, paid holidays, railroad retirement and unemployment insurance, health and welfare benefits	82	
Contingencies	22	3
	<u>260</u>	<u>40</u>
		<u>260</u>
TOTAL COST - 100% city of Wilsonville		300
PART III - <u>Work to be performed by the Railway. Cost to be divided City 57% and Railway 43%.</u>		
1. <u>Track Work</u> Rehabilitate and resurface one track through crossing area by renewing ties, ballast, rail and installing flange rails	1,343	2,665
Material handling		146
Freight		226
Equipment rental		336
Salvage credit		(310)
	<u>1,343</u>	<u>3,063</u>

	Labor	Non-Labor
2. <u>Paving</u> Furnish and place asphaltic paving in crossing area (to be contracted)		680
3. <u>Accounting</u> Preparation of bills	54	
4. <u>Liability Insurance</u> \$1,000,000 coverage @ \$12/100 of payroll		161
5. <u>Labor Surcharges</u> Vacation pay, paid holidays, railroad retirement and unemployment insurance, health and welfare benefits	562	
Contingencies	196	421
	2,155	4,325
		<u>2,155</u>
Total Cost		6,480
Railway Company 43%		<u>2,786</u>
City of Wilsonville 57%		<u>3,694</u>

PART IV- Work to be performed by the
Railway. Cost to be divided 75%
State Grade Crossing Protection
Account, 20% Railway, and 5% City.

1. <u>Signal Work</u> Install automatic flashing light cantilever signals with gates	8,500	31,900
Insulate two switches	500	200
Install insulated joints	450	540
Power connection	500	300
Personal expenses		3,255
Material handling		1,668
Freight		981
Equipment rental		<u>1,385</u>
	<u>9,950</u>	40,229
2. <u>Engineering</u> Perform preliminary engineering Engineering inspection in the field during construction	1,275	
Equipment rental	300	
	<u>1,575</u>	<u>315</u>
		315
3. <u>Accounting</u> Preparation of bills	461	
4. <u>Liability Insurance</u> \$1,000,000 coverage @ \$12/100 of payroll		1,230

	<u>Labor</u>	<u>Non-Labor</u>
5. <u>Labor Surcharges</u>		
Vacation pay, paid holidays, railroad retirement and unemploy- ment insurance, health and welfare benefits	5,022	
Contingencies	<u>1,701</u>	<u>4,177</u>
	18,709	45,951
		<u>18,709</u>
Total Cost		64,660
Railway Company 20%		12,932
State of Oregon 75%		48,495
City of Wilsonville 5%		3,233

SUMMARY

	<u>Railway</u>	<u>State</u>	<u>City</u>	<u>Total</u>
PART II			300	300
PART III	2,786		3,694	6,480
PART IV	<u>12,932</u>	<u>48,495</u>	<u>3,233</u>	<u>64,660</u>
	15,718	48,495	7,227	71,440

EXHIBIT "B"

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

<u>(a)</u> <u>Number</u>	<u>(b)</u> <u>Classification</u>	<u>(c)</u> <u>Base Pay</u>	<u>(d)</u> <u>Headquarters</u>
1	Section Foreman		
2	Laborers	5.57/hr.	Tualatin, Oregon

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 communication 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 per man per hour for normal eight-hour shift in effect
- (d) Estimated costs for travel per employee from headquarters to job site and return is \$none per round trip. The estimated daily cost for meals and other accommodation is \$ none per employee.
- (e) In addition, protective devices, such as crossing signals, indicators, telltales, telephone, etc., may be required. In this connection telltales 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 City 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 37 % of direct labor costs.

EXHIBIT "D"

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 Transportation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, 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 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A, B & C.
- (3) Solicitations of Subcontractors, 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 Federal Highway Administration 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 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 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 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 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.

* PROHIBITION OF DISCRIMINATION ON THE BASIS OF SEX.

SEC. 162. (a) Chapter 3 of title 23, United States Code is amended by adding at the end thereof the following new section:
"§ 324, Prohibition of discrimination on the basis of sex. No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."