

EXHIBIT I
FORM OF O&M AGREEMENT

[SEE ATTACHED]

OPERATING AND SUPPORT SERVICES AGREEMENT

FOR

THE I-95 HOV/HOT LANES PROJECT

BETWEEN

**95 EXPRESS LANES LLC,
a Delaware limited liability company**

AND

**TRANSURBAN (USA) OPERATIONS INC.,
a Delaware corporation**

July 31, 2012

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OPERATING AND SUPPORT SERVICES AGREEMENT FOR I-95 HOV/HOT LANES PROJECT (this "Agreement"), entered into as of July 31, 2012 between 95 Express Lanes LLC, a Delaware limited liability company (the "Concessionaire"), and Transurban (USA) Operations Inc., a Delaware corporation (the "Operating Company").

RECITALS

The Concessionaire and the Virginia Department of Transportation (the "Department") have entered into a Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project, dated as of July 31, 2012 (the "CA"), under which the Concessionaire, among other things, will construct, operate and maintain the Project (as defined in the CA).

The Concessionaire wishes to appoint the Operating Company to perform the Work (as defined in the CA) required to be performed by the Concessionaire during the pre-Construction, Construction and Operating Periods and certain other services specified herein, and the Operating Company wishes to accept that appointment, subject to, and in accordance with, the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

All capitalized terms used herein shall have the respective meanings given to them in this Agreement and in the Definitions attached as Exhibit A or, if not defined herein or therein, in the CA.

ARTICLE 2

APPOINTMENT OF THE OPERATING COMPANY

The Concessionaire hereby appoints the Operating Company to perform the management, operations, maintenance, administration and other services described herein (the "Services"), subject to the terms, conditions and provisions set forth herein. The Operating Company accepts such appointment and agrees to perform the Services in accordance with the terms, conditions and provisions set forth herein. The Operating Company shall have no interest in or rights under the CA or interest in the Project.

ARTICLE 3

OPERATING COMPANY'S RESPONSIBILITIES AND AUTHORITY

Section 3.01 Annual Budget

(a) A copy of the initial Annual Budget for the Project for the period from the date hereof through the end of fiscal year 2013 is attached as Exhibit B, which budget has been approved by the Concessionaire.

(b) For each Agreement Year and partial Agreement Year from and after the Financial Close Date, the Operating Company shall deliver to the Concessionaire an Annual Budget for the Project for such full or partial Agreement Year at least 120 days prior to the start of such Agreement Year or partial Agreement Year. The Operating Company acknowledges and agrees that each such Annual Budget shall be in a form reasonably acceptable to the Concessionaire and the Department and show in reasonable detail all management and coordination expenses payable to the Operating Company under this Agreement. During the Operating Period, such Annual Budget shall show, where appropriate, projected Gross Revenues, projected Operating Costs (including all amounts payable to the Department), projected maintenance expenses (including the costs of Major Maintenance activities to be performed pursuant to the Life Cycle Maintenance Plan), projected capital expenses, projected debt service and other amounts payable with respect to Concessionaire Debt (identifying separately projected debt service), contributions to individual reserves, projected Distributions, and such other information as the Concessionaire or the Department may reasonably require. Each Annual Budget, approved in accordance with this Section, shall be provided by the Operating Company (on behalf of the Concessionaire) to the Department not later than 90 days prior to the start of each Agreement Year or partial Agreement Year. While the Shared Facilities Agreement is in effect, the Annual Budget shall reflect the Concessionaire's allocated costs for the Shared Services, using the allocation percentage provided by the Concessionaire from time to time.

(c) Not later than ten (10) Business Days after receipt by the Concessionaire of a proposed Annual Budget, the Concessionaire may deliver a notice (an "Objection Notice") to the Operating Company stating that the Concessionaire objects to any information contained in or omitted from such proposed Annual Budget and setting forth the nature of such objections. With respect to all or any portion of such proposed Annual Budget as to which no Objection Notice is timely delivered, the proposed Annual Budget or such portion thereof will be deemed to have been approved and accepted by the Concessionaire. If an Objection Notice is timely delivered, the Operating Company shall modify the proposed Annual Budget, taking into account the Concessionaire's objections, and shall resubmit the same to the Concessionaire for its approval within five (5) Business Days thereafter, and the Concessionaire may deliver further Objection Notices (if any) within five (5) Business Days thereafter (in which event, the re-submission and review process described above in this sentence shall continue until such Annual Budget is approved and accepted by the Concessionaire or deemed to be so approved and accepted). During any Agreement Year, the Operating Company shall have the right at any time subsequent to the approval and acceptance of the Annual Budget for such Agreement Year to propose and submit an amended Annual Budget to the Concessionaire for approval. The approval process for

such amended Annual Budget shall be as set forth above for Annual Budgets. The Annual Budget as approved by the Concessionaire from time-to-time is the “Approved Budget.”

(d) In addition, no later than 120 days before the beginning of each calendar year after the Service Commencement Date, the Operating Company shall annually prepare and provide to the Concessionaire for its review (in accordance with Section 3.01) a full five-year period maintenance plan on a rolling basis that describes life cycle asset maintenance for the Project in conformance with the Concessionaire’s obligations under Section 9.04 of the CA (the “Life Cycle Maintenance Plan”), which shall be subject to approval by the Concessionaire and (following approval by the Concessionaire) the Department. The Life Cycle Maintenance Plan shall include a description of all Major Maintenance to be undertaken during such five-year period, by component, item or discrete project (each a “Task”), the estimated costs and timing relating to each Task, the underlying assumptions used to develop such plans, including the assumptions arising from the re-evaluations of the conditions of the Assets conducted pursuant to Section 9.04(c) of the CA and such other information as may be reasonably requested by the Concessionaire or the Department. The Operating Company shall reasonably consider any changes or additions proposed by the Concessionaire or the Department (as conveyed to the Operating Company through the Concessionaire or directly from the Department) to the proposed Life Cycle Maintenance Plan and modify the Life Cycle Maintenance Plan to reflect those changes and additions which are consistent with Good Industry Practice, applicable Law, Technical Requirements or Governmental Approvals and the other requirements of the CA and this Agreement. The Department is to approve the Life Cycle Maintenance Plans in accordance with the terms of the CA. The Life Cycle Maintenance Plan as approved by the Concessionaire and the Department is the “Approved Life Cycle Maintenance Plan.”

Section 3.02 Implementation of Annual Budget and Life Cycle Maintenance Plan

(a) Following approval and acceptance of each Annual Budget by the Concessionaire and of each Life Cycle Maintenance Plan by the Concessionaire and Department, the Operating Company shall have the authority, consistent with prudent industry practice to implement such Approved Budget and Approved Life Cycle Maintenance Plan in accordance with its terms and to incur expenses or capital expenditures on behalf of the Concessionaire in accordance with the Approved Budget in an aggregate up to 110% of such Approved Budget. The Operating Company shall use its commercially reasonable efforts to implement the provisions of the Approved Budget and Approved Life Cycle Maintenance Plan and shall supervise the day-to-day operations of the Project in accordance with the then-current Approved Budget. Prior to the approval and acceptance of any proposed Annual Budget and following expiration of the immediately preceding Approved Budget, the Operating Company shall have authority to manage the Project in the ordinary course of business, in accordance with the requirements set forth in Section 3.01 and Section 3.02(b).

(b) In the event that all or any part of an Annual Budget has not been approved at the time the prior year’s Approved Budget has expired and the Concessionaire has not approved an alternative Annual Budget, the Operating Company shall thereafter operate in accordance with the prior year’s Approved Budget (or appropriate portion thereof). If an Annual Budget has not been approved for four consecutive months following the expiration of the last Approved Budget and the Concessionaire has not approved an alternative Annual Budget, the Operating Company

shall thereafter operate in accordance with the last Approved Budget (or appropriate portion thereof), escalated by applying the annual CPI change to each line item.

(c) Notwithstanding the limitations set forth in paragraphs (a) and (b) above and anything to the contrary set forth herein, the Operating Company is authorized to incur, and, subject to the Concessionaire's right to dispute the propriety of specific expenditures, shall be compensated in accordance with Section 9.01 for, any expenses and capital expenditures to the extent required (i) to preserve the public health and safety of the Project, (ii) in order for the Operating Company or the Concessionaire to comply with all applicable Law, (iii) to protect and preserve the Project from imminent or irreparable harm, (iv) in order for the Operating Company (on behalf of the Concessionaire) to expeditiously carry out Safety Compliance Orders or (v) for the Concessionaire to comply with any of the terms, conditions or provisions of the CA or the other Project Agreements, including required capital expenditures to be made by the Concessionaire under the CA or the other Project Agreements that the Operating Company did not reasonably contemplate when proposing its Annual Budget including as a result of the acts or omissions of the Department, the Concessionaire or other third parties. To the greatest extent practicable under the circumstances, the Operating Company shall notify the Concessionaire of its intention to incur any costs under this Section 3.02(c) and seek the Concessionaire's concurrence regarding the need for and amount of any such costs.

Section 3.03 Preparatory Services Prior to the Construction Period

Commencing on the OSSA Agreement Date, but prior to commencement of the Construction Period, the Operating Company, on behalf of the Concessionaire, acknowledges and agrees to be responsible for complying with the Concessionaire's obligations under the CA and the other Project Agreements, including preparing for and achieving the Commencement Date so as to be ready to provide all Construction Period services pursuant hereto from and after the Commencement Date.

Section 3.04 Services During the Construction Period

(a) The Operating Company, on behalf of the Concessionaire, shall be responsible for providing or contracting for all services required to be performed during the Construction Period in order to manage, coordinate and supervise the Work and comply with the Concessionaire's obligations under the CA and the other Project Agreements, including providing required notices to, and meeting with or otherwise maintaining relations with, the Department and the Lenders; all such obligations subject to the limitations set forth in Section 3.01. The services of the Operating Company shall specifically include the following:

(i) During the Construction Period the Operating Company shall supply the personnel, resources and services described in Part I of Exhibit C.

(ii) The Operating Company shall perform all of the duties and obligations associated with a Concessionaire's Project Manager and/or Concessionaire's Field Representative (as applicable) in accordance with the Design-Build Contract and the other Project Agreements.

(iii) The Operating Company shall review and approve payments to Design-Build Contractor and other parties, as appropriate, in accordance with the terms of the Design-Build Contract and the CA, as applicable.

(iv) The Operating Company acknowledges and agrees to be responsible for all other obligations and duties of Concessionaire under the Design-Build Contract and the other Project Agreements to the extent such obligations are not required to be performed by Design-Build Contractor under the Design-Build Contract.

(b) As between the Concessionaire and the Operating Company, the Concessionaire shall pay directly, or make funds available to the Operating Company for the Operating Company to pay, any costs for which the Concessionaire becomes responsible under Section 8.04(h) of the CA.

Section 3.05 Services Prior to the Operating Period

Prior to the Service Commencement Date, the Operating Company, on behalf of the Concessionaire, shall prepare for Service Commencement so as to be ready to provide all Operating Period services pursuant hereto from and after the Service Commencement Date, subject to the limitations set forth in Section 3.01. Without limiting the foregoing, the Operating Company agrees to be responsible for (i) providing oversight and input into design requirements and business process, training, testing and documentation, (ii) providing planning and management services associated with the Concessionaire's approved communications, public outreach and community education plan during the period prior to the Service Commencement Date, and (iii) as appropriate, obtaining Governmental Approvals necessary to operate the Project.

Section 3.06 Management and Operation of the HOT Lanes; Operating Period

The Operating Company, on behalf of the Concessionaire, shall be responsible for providing or contracting for all services required to be performed during the Operating Period in order to operate, maintain, repair, renew and restore the HOT Lanes in compliance with the Concessionaire's obligations under the CA and the other Project Agreements, including providing required notices to, and meeting with or otherwise maintaining relations with, the Department and the Lenders; all such obligations subject to the requirements set forth in Sections 3.01 and 3.02. Without limiting the foregoing, the Operating Company is responsible for the following:

(a) Management and Operation of Project. The Operating Company, on behalf of the Concessionaire, shall, from and after the first to occur of the Service Commencement Date and the Final Acceptance Date, manage and operate the Project in accordance with the applicable sections of Exhibit B of the CA – Scope of Work, with all applicable Law, all Governmental Approvals, and the terms, conditions and standards set forth in the CA and this Agreement, including the operations and maintenance requirements set forth in the Technical Requirements (Exhibit C to the CA) and in accordance with Good Industry Practices. Without limiting the foregoing, the Operating Company agrees to be responsible for the following:

(i) the management and control of traffic on the Project, including, but not limited to, incident response services and temporary partial or full closures of the Project, subject to the Department's rights to assume control as expressly provided in this Agreement or the CA;

(ii) the maintenance, inspection and repair of the Project and all systems and components thereof, including the ETTM System, including the upgrade, modification, change and replacement thereof, as applicable, in accordance with this Agreement, the CA and the Technical Requirements;

(iii) the operation of the Project and the ETTM System, and otherwise carrying out the collection and enforcement of tolls and other incidental charges in accordance with Article 5 of the CA respecting the Project;

(iv) the maintenance, compliance with and renewal of Governmental Approvals necessary and incidental to the foregoing activities;

(v) traffic management, and maintenance and repair responsibilities in accordance with the CA and the Technical Requirements; and

(vi) except as otherwise specifically provided herein (including the right of the Concessionaire to close all or a portion of the Project in accordance with the provisions hereof), at all times during the Term, causing the Project to be continuously open and operational for use by all members of the public travelling in Permitted Vehicles (as defined in the CA) 24 hours a day, 365 Days a year.

(b) (i) The Operating Company acknowledges that from time to time the Concessionaire and the Department may agree to changes to the Scope of Work (Exhibit B to the CA) and the Technical Requirements (Exhibit C to the CA). In the event that either Exhibit B or Exhibit C of the CA is amended, the Operating Company will review, comment and provide indicative costs of compliance with the proposed amendment. The Operating Company will use good faith endeavors to agree with the Concessionaire to provide any requisite services in accordance with Section 3.07 to comply with the amendment agreed to by the Department.

(ii) In the event that the Operating Company is unable to provide or, in the reasonable view of the Concessionaire (which may be subject to approval by the Department pursuant to the CA) is not an appropriate party to provide, the requisite services to comply with the amendment to either Exhibit B or Exhibit C of the CA, then the Operating Company will procure from a suitably qualified and capable third party a proposal to deliver in full the requisite services. If the Concessionaire itself enters into a contract for such services, the Concessionaire must ensure the services are provided in a timely and appropriate manner no matter who performs the services as determined by the Independent Engineer. Notwithstanding the foregoing:

(A) the Operating Company acknowledges that the Concessionaire may engage a third party to provide the requisite services in compliance with the amendment; and

(B) the versions of the Exhibit B or Exhibit C of the CA last agreed to by the Concessionaire and Operating Company will continue to apply to the Operating Company in the performance of its services hereunder.

(iii) The Operating Company further acknowledges that should the Concessionaire accept the proposal to provide the requisite services through the third party, the Operating Company is responsible to ensure all operational interfaces are provided such that the full responsibilities of this Agreement are met. If the Operating Company believes that it will incur costs not included in the Approved Budget in order to provide such operational interfaces, it shall propose an appropriate modification to the Approved Budget pursuant to Section 3.01(c) and shall provide such operational interfaces as agreed with the Concessionaire pursuant to the revised Approved Budget.

(c) Maintenance Work; Inspection and Implementation of Life Cycle Maintenance Plan. The Operating Company, on behalf of the Concessionaire, shall be responsible for fulfilling the Concessionaire's obligations under Section 9.04 of the CA to (i) perform, or cause to be performed, all life cycle maintenance (including Major Maintenance) in accordance with Life Cycle Maintenance Plans approved by the Department, and (ii) conduct re-assessments of the physical condition of the Project in accordance with the CA and the Technical Requirements.

(d) Police and Enforcement Services. The Operating Company, on behalf of the Concessionaire, will manage the provision of customary police services to be provided by the State and enforcement on the HOT Lanes pursuant to Section 9.06 of the CA.

(e) Hazardous Substances Management. The Operating Company, on behalf of the Concessionaire, will manage the Hazardous Substances management and other services to be provided by the Concessionaire pursuant to Article 16 of the CA.

(f) Snow and Ice Removal. The Operating Company, on behalf of the Concessionaire, will provide access to the HOT Lanes to the Department and its contractors for snow and ice removal services as provided in Section 9.03(b)(ii) of the CA.

(g) Other Operations Services. The Operating Company, on behalf of the Concessionaire, will also provide such other administrative and general management services for the ongoing operations of the Concessionaire, including but not limited to: coordination of all financial reporting required by Law, under the CA, the documents governing Concessionaire Debt, or otherwise, including audits and financial services; the Operating Company will also perform major marketing and public relations based upon a plan to be developed by the Operating Company and agreed to by the Concessionaire. The Operating Company will also be responsible for monitoring and providing: asset enhancement services, including the identification of safety enhancements for the Project; and asset improvements to improve the present value of the Project. To the extent requested by the Concessionaire, Operating Company will provide, maintenance of governance documents of the Concessionaire under the Concessionaire LLC Agreement; and handling all legal issues arising under the CA, including litigation.

(h) Shared Facilities. The Operating Company acknowledges that it has received a copy of the Shared Facilities Agreement, is familiar with its contents, and has been designated (and accepts the designation as) the “Shared Facilities Operator” thereunder and will fulfill the obligations of the Shared Facilities Operator as part of the Services. The Operating Company further agrees that if the Beltway OSSA is terminated for any reason but this Agreement is not terminated and the Concessionaire elects to retain the Operating Company as the Shared Facilities Operator, then, as contemplated in the Shared Facilities Agreement, the Operating Company will enter into an appropriate subcontract with the entity replacing it as the operator of the Beltway Project such that it continues to be the Shared Facilities Operator on behalf of both the Project and the Beltway Project.

(i) Meetings with the Department. The Operating Company shall participate in meetings between the Concessionaire and the Department, upon the Department’s reasonable request, concerning matters pertaining to the Operating Company or the Work; provided, that all direction to the Operating Company will be provided by the Concessionaire.

Section 3.07 Additional Services

The Operating Company shall provide such other additional services from time to time requested by the Concessionaire and agreed to by the Operating Company (the “Additional Services”). Such Additional Services shall be paid in accordance with Section 9.01, and the Approved Budget shall be adjusted as agreed by the parties to account for the costs of such Additional Services.

Section 3.08 Personnel

The Operating Company shall provide and make available as necessary, in accordance with the requirements of the Approved Budget all such labor and professional, supervisory, administrative and managerial personnel as are required to perform the Services in accordance with this Agreement. The Operating Company will use reasonable care to select personnel performing the Services during the OSSA Term with requisite experience and skills for the tasks assigned and who meet licensing and certification requirements imposed by applicable Law. The Operating Company’s personnel shall carry out the Operating Company’s obligations hereunder using skill, competence and diligence consistent with prudent industry practice for the management, operation and maintenance of a HOT lanes toll road project.

Section 3.09 Subcontracting of Services

(a) The management and coordination of the Work and the operation and maintenance of the HOT Lanes shall, at all times from Financial Close and continuing during the OSSA Term, be under the direction of the Operating Company, which may perform its management services relating to Work, traffic management, ordinary maintenance and repair, and other responsibilities under this Agreement through use of its own personnel, materials and equipment, or by subcontracting to Persons with the expertise, qualifications, experience, competence, skills and know-how to perform the responsibilities being subcontracted in accordance with all applicable Law, all Governmental Approvals, the CA and the terms, conditions and standards set forth in this Agreement. As required by Section 24.02(j) of the CA,

the Operating Company covenants that it will not subcontract any part of the Work to a subcontractor who is not prequalified with the Department in accordance with the Department's Rules Governing Prequalification Privileges (as such term is used in the CA), unless otherwise indicated in the CA; provided, that this restriction does not apply to contract specialty items, consultants, manufacturers, suppliers, haulers or snow removal service providers. Notwithstanding its use of a subcontractor, the Operating Company remains ultimately responsible for the management and coordination of the Work and the operation and maintenance of the HOT Lanes during the OSSA Term in accordance with this Agreement. Any subcontractor shall at all times be subject to the direction and control of the Operating Company and, to the extent specified herein, the Concessionaire, and any delegation to a subcontractor does not relieve the Operating Company of any obligations, duties or liability hereunder.

(b) To the extent that the Operating Company intends to subcontract all or substantially all of its obligations and responsibilities under this Agreement to a subcontractor, the Operating Company shall not engage or appoint such subcontractor unless the Concessionaire and the Department have approved such subcontractor. The Operating Company shall immediately notify the Concessionaire and the Department upon the termination or resignation of such subcontractor. Any agreement between the Operating Company and such subcontractor shall by its terms terminate without penalty at the election of the Department upon five (5) Business Days' notice to the Operating Company upon the termination of this Agreement. No subcontractor shall have any interest in or rights under this Agreement or the Project.

Section 3.10 Obligation to Turn Over Project at End of OSSA Term

Not later than 180 Days preceding the end of the OSSA Term, the Operating Company shall develop a Transition Plan to assure the orderly transition of the HOT Lanes to the Department or a Department contractor and the Operating Company shall assist the Concessionaire in the development of such plan, which may be directly with the Department, if so instructed by the Concessionaire, until the execution of such plans. Until the last day of the OSSA Term, whether upon expiration or earlier termination, the Operating Company shall cooperate with the Concessionaire in the satisfaction of the Concessionaire's obligations set forth in Sections 20.02 and 20.08 of the CA, including providing all tangible property with respect to the Project to the Department.

ARTICLE 4

LIMITATIONS ON AUTHORITY

Other than as set forth or contemplated herein, the Operating Company shall have no authority, without the prior written consent of the Concessionaire (given with the approval of the Supermajority of all Members (as defined in the Concessionaire LLC Agreement), to take any action that requires the consent of the Supermajority of all Members pursuant to Paragraph 6.04 of the Concessionaire LLC Agreement.

ARTICLE 5

STANDARD OF CARE; COOPERATION

Section 5.01 Ethical Standards

(a) The Operating Company has adopted and provided copies to the Concessionaire (and to the Department) of its written policies establishing ethical standards of conduct for all its directors, officers and supervisory or management personnel in dealing with the Department and employment relations. Such policy including any amendments or modifications shall include standards of ethical conduct concerning the following:

(i) Restrictions on gifts and contributions to, and lobbying of, any State Party and any of their respective commissioners, directors, officers and employees;

(ii) Protection of employees from unethical practices in the selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

(iii) Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by the Operating Company or its personnel or any subcontractors of any tier;

(iv) Restrictions on directors, members, officers or supervisory or management personnel of the Operating Company engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

(v) Restrictions on use of an office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of the Operating Company or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

(vi) Adherence to the Department's organizational conflict of interest rules and policies pertaining to the hiring of any consultant which has assisted the Department in connection with the negotiation of this Agreement or the conduct of Oversight Services for the Project.

(b) The Operating Company shall cause its directors, members, officers and supervisory and management personnel, and require those of its contractors of any tier, to adhere to and enforce the adopted policy on ethical standards of conduct. The Operating Company shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

(c) The Operating Company agrees that: (i) no gifts, gratuities, or favors of any nature whatsoever will be given or offered by or on behalf of it to personnel of the Department; and (ii) it will not employ any personnel of the Department for any services during the OSSA Term, without the prior written consent of the Department. Under Section 25.02(c) of the CA, if the Department determines, after investigation, that the Operating Company or any of its employees, representatives, or agents of any person acting in its behalf have violated this provision, the Operating Company may, at the discretion of the Department, be disqualified from bidding on future contracts with the Department for a period of six months from the date of the Department's determination of such a violation. Any implicated employees, agents, or representatives of the Operating Company may be prohibited from working on any contract awarded by the Department for the period of disqualification.

Section 5.02 Standard of Performance

The Operating Company shall perform its obligations under this Agreement in accordance with all applicable Law (including all construction and safety and health standards established by law, including the State and Federal Occupational Health and Safety Acts (as defined in the CA), all applicable Governmental Approvals, and, with respect to each obligation hereunder, at the same standards set forth in the CA for the Concessionaire, including the operations and maintenance requirements set forth in the Technical Requirements (Exhibit C to the CA, as amended from time to time), provided that if there is a conflict between any of the above requirements, the Operating Company shall inform the Concessionaire and Department accordingly, and the parties shall agree in writing on the manner in which the Operating Company shall perform the Services hereunder. The Operating Company shall at all times act in good faith and in the best interests of the Concessionaire and its subsidiaries with respect to the Project, and shall carry out its obligations hereunder using skill, competence and diligence consistent with prudent industry practice for such Services.

Section 5.03 Cooperation of the Parties

The Concessionaire and the Operating Company will each reasonably cooperate with each other in the performance of its respective obligations and enforcement of its respective rights and remedies under this Agreement, including providing such other party with assistance and information that is reasonably necessary for such purposes.

Section 5.04 Federal Immigration Reform and Control Act

In accordance with Section 2.2-4311.1 of the Virginia Code, the Operating Company hereby certifies that it does not and agrees that it will not, during the term hereof, knowingly employ in connection with the performance of the Services an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. The Operating Company further agrees that it will require all of its subcontractors of any tier to certify that they do not and will not knowingly employ an unauthorized alien as defined by such Act.

Section 5.05 Labor, Employment and DBE/SWaM Related Matters

The Operating Company will comply, and will cause its subcontractors of any tier to comply, with the provisions set forth in the Labor, Employment and DBE/SWaM Related Matters attached as Exhibit D.

Section 5.06 Federal Aid Transportation Projects

In addition to complying with all other Laws, in performing the Services, the Operating Company shall comply, and require all subcontractors of any tier to comply, with all legal requirements applicable to the Project as a result of the costs of the Project being financed in part with State funds, federal-aid funds and State bond proceeds, including the applicable Federal Requirements set forth in Exhibit E.

ARTICLE 6

CONTRACTING PRACTICES

Section 6.01 Obligation to Refrain from Discrimination

The Operating Company covenants and agrees that it shall not discriminate and it shall require all its subcontractors of any tier not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion or the presence of any sensory, mental or physical handicap in the permitting, design, acquisition, construction, maintenance, operation or management of the Project, nor shall the Operating Company establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees, contractors, subcontractors and vendors or with reference to the use, occupancy or enjoyment of or access to or toll rates charged for use of the Project; *provided*, that the prohibition against discrimination on the basis of sensory, mental or physical handicap shall not apply if the particular disability prevents the proper performance of the particular person involved.

Section 6.02 Third-Party Agreements

(a) The Operating Company shall advise the Concessionaire as to the necessity or desirability of entering into agreements, at Concessionaire's expense, with third parties ("Third-Party Agreements"), to perform the duties Operating Company reasonably deems necessary under the CA and this Agreement. At the request of Concessionaire, the Operating Company will obtain competing bids from third parties approved by the Concessionaire. The Operating Company shall endeavor to (i) obtain such Third-Party Agreements on terms no less favorable to Concessionaire than those obtained by Operating Company for comparable services, and (ii) where appropriate, cause such Third-Party Agreements to provide that the members of Concessionaire and the Department shall have rights to examine the books and records of such third parties pertaining to the Concessionaire and the Project.

(b) Each Third Party Agreement that Operating Company executes at a minimum shall include the terms and conditions set forth in Sections 24.02(d), (f), (g), (h), (i), (j) and (m) of the CA. Upon entering into a Third Party Agreement in excess of \$100,000, the Operating

Company will provide the Department and the Concessionaire with a copy of such Third Party Agreement and, if such Third Party Agreement is with an Affiliate of the Concessionaire or Operating Company, a list of all Third Party Agreements in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Third Party Agreement are delegated to its contractor. The Operating Company will allow the Concessionaire and the Department ready access to all Third Party Agreements and records regarding Third Party Agreements, including amendments and supplements to Contracts and guarantees thereof.

(c) The Operating Company will, within seven days following receipt of monies from the Concessionaire for Services performed by any subcontractor, either (i) pay such subcontractor for the proportionate share of the total payment received from the Concessionaire attributable to the Services performed by such subcontractor or (ii) notify the Concessionaire and such subcontractor, in writing, of the Operating Company's intention to withhold all or a part of the subcontractor's payment, specifying the reason for the non-payment. The Operating Company will include in all of its subcontracts a provision that (A) obligates the it to pay interest to its subcontractors on all amounts owed by it that remain unpaid after seven days following receipt of monies from the Concessionaire for Services performed by its subcontractor, except for amounts withheld as allowed in clause (ii) of this Section 6.02(c); (B) states, "Unless otherwise provided under the terms of this contract, interest will accrue at the rate of one percent per month." and (C) obligates each subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 6.02(c) with respect to each lower-tier subcontractor.

Section 6.03 Small, Women-Owned and Minority Business (SWaM) and Disadvantaged Business Enterprise (DBE) Programs

(a) The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the DBE and SWaM programs, where applicable. Further, the Operating Company will encourage the participation of DBE firms and SWaM firms in the Project. The Operating Company will carry out applicable Federal Requirements, including but not limited to the requirements of 49 CFR part 26, and the applicable requirements of Executive Order 33 (2006) in the administration of this Agreement and the award and administration of subcontracts pursuant to this Agreement.

(b) The Concessionaire will set annual DBE and SWaM goals and the Operating Company will make Good Faith Efforts to achieve or exceed such goals in contracts for the O&M Work. The Operating Company will provide its participation on SWaM matters to the Concessionaire and the Department Representative, and the Department may include those participation rates, as appropriately adjusted, with its own towards the State's long-term goal established pursuant to the Office of the Governor's Executive Order 33 (2006). The annual and long-term participation SWaM goal for the Concessionaire in contracting for the O&M Work is 4% and the annual and long-term participating DBE goal for the Concessionaire in contracting for the O&M Work is 2%.

(c) During the Operating Period, the Operating Company, on behalf of the Concessionaire, shall be responsible for fulfilling the Concessionaire's obligations under Article

24 of the CA, including those under Section 24.03 of the CA. The Operating Company acknowledges the remedies available to the Department under such Section 24.03 of the CA (including debarment and disqualification) if such obligations are not satisfied, and agrees that the Department's exercise of such remedies shall not relieve the Operating Company of any of its obligations under this Agreement and that it shall be fully liable to Concessionaire for any failure to timely and fully fulfill such obligations in accordance with the terms of this Agreement.

ARTICLE 7

CONCESSIONAIRE OVERSIGHT

Section 7.01 Right to Oversee Work

The Operating Company acknowledges and agrees that the Department shall have the right at all times during the OSSA Term to carry out Oversight Services with respect to all aspects of the management, maintenance, repair, preservation, modification, operation and administration of the Project, and any Change Orders, Deviations, Directive Letters or Project Enhancements and the performance by the Operating Company of the Services. The Operating Company, at the request of the Concessionaire, agrees to cooperate in all reasonable respects with the Department to facilitate its conduct of Oversight Services. In the course of performing Oversight Services, the Operating Company acknowledges that the Department will use reasonable efforts to minimize the effect and duration of any disruption to or impairment of the Project and may perform Oversight Services in cooperation with the Independent Engineer so as to minimize to the extent reasonably possible duplication or inefficiencies in the performance of such Oversight Services.

Section 7.02 Department Access and Inspection

The Operating Company acknowledges and agrees that the Department, the FHWA and their respective authorized agents and the Independent Engineer shall have unrestricted access at all times to enter upon, inspect, sample, measure and physically test any part of the Project and the Project Right of Way, as well as any materials, supplies, machinery and equipment to be incorporated into or used in construction, operation or maintenance of the Project. The Operating Company further acknowledges and agrees that the Department shall also have the right, upon reasonable advance written notice to the Operating Company (except as provided in Section 18.07(a) of the CA), to inspect financial or other records relating to the Project. If at any time the Operating Company has failed to perform any of its operating or maintenance obligations in any material respect then, in addition to other remedies available under this Agreement and the other Project Agreements, the Operating Company acknowledges and agrees that the Department is entitled to increase the level of its monitoring during the Operating Period, of the Project, and the Operating Company's compliance with its operation and maintenance obligations under this Agreement until such time as the Operating Company has demonstrated to the Department's reasonable satisfaction that it will perform and is capable of performing its operation and maintenance obligations under this Agreement.

Section 7.03 Inspection and Audit Rights

The Operating Company shall make available to the Concessionaire, the Department and, subject to Section 18.07(c) of the CA, FHWA (including their employees, contractors, consultants, agents and designees), and allow each of them access to, such books, records and documents as they may reasonably request in connection with the Project for any purpose related to the Project, this Agreement, the CA or the other Project Agreements, including but not limited to monitoring compliance with the terms and conditions of this Agreement, the CA and the other Project Agreements; provided, however, that the Department may exercise such rights unannounced and without prior notice during a Concessionaire Default or where there is good faith suspicion of fraud.

ARTICLE 8

BOOKS AND RECORDS; REPORTS; INTELLECTUAL PROPERTY; BRANDING

Section 8.01 Books and Records

(a) General. The Operating Company shall maintain or cause to be maintained proper books of records and accounts in which complete and correct entries shall be made of its transactions with respect to the Project in accordance with Generally Accepted Accounting Principles. Such books and records shall be maintained at a location situated within the contiguous United States as designated by the Operating Company by delivery of notice of such location to the Concessionaire. Further, the Operating Company will maintain or cause to be maintained such books, records and accounts in accordance with applicable Law, including Laws applicable to the Project as a result of the costs of the Project being financed in part with State funds, federal-aid funds and State bond proceeds.

(b) Availability of Books and Records. All the books and records referred to above in this Section 8.01 shall, upon reasonable notice to Operating Company, be open to inspection and examination by any member of Concessionaire or Transurban DRIVE Holdings LLC, or any of Concessionaire's other direct or indirect subsidiaries or their representatives, during reasonable business hours, for any purpose reasonably related to such member's interest as a member in such entity during the term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement, subject to the Concessionaire's right to instruct the Operating Company to obtain confidentiality agreements and other reasonable safeguards against disclosure, for such period of time as the Concessionaire deems reasonable, with respect to any information the disclosure of which the Concessionaire reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Concessionaire in good faith believes is not in the best interests of Concessionaire or could damage Concessionaire or its business; *provided*, that the Operating Company may disclose information without a confidentiality agreement to the extent required by Law or judicial order.

Section 8.02 Reports; Audit and Tax Preparation; GAAP

(a) Reports. The Operating Company shall timely prepare and submit the following reports:

(i) Quarterly Financial Reports; Base Case Financial Model Updates. Within sixty (60) days after the end of the first three quarters of each fiscal year, Operating Company shall prepare and deliver to the members of Concessionaire (1) quarterly financial statements of Concessionaire and its subsidiaries, including a quarterly balance sheet, profit and loss statement and a statement of changes in financial position, and a statement showing distributions to the members of Concessionaire, and (2) such tax estimates as any member of Concessionaire shall reasonably request. Operating Company shall also provide Base Case Financial Model Updates as and when required by the CA.

(ii) Annual Financial Reports. Within ninety (90) days after the end of each fiscal year of Concessionaire during the term of this Agreement, Operating Company shall prepare and deliver to the members of Concessionaire an annual consolidated audited financial and operating report of Concessionaire, including a consolidated balance sheet, profit and loss statement and a statement of changes in financial position and a statement showing distributions to the members, audited by Concessionaire's independent registered accountants; and

(iii) Monthly Operational Reports. Within fourteen (14) days after the end of each month, the Operating Company shall prepare and deliver to the members of Concessionaire a written report, in a form approved by the Concessionaire which provides a written summary of the Services provided during the preceding month which shall (among other things) include details of:

- (A) during the Construction Period, the occurrence of any event under the Design-Build Contract which the Operating Company considers has caused or is reasonably likely to cause a delay to the achievement of the Service Commencement Date; any Scope Change, Department Change Proposal, Change Order, Technical Requirements Revisions, Work Order (as such terms are defined in the Design-Build Contract) initiated or effected under the Design-Build Contract which the Operating Company considers has caused or is reasonably likely to cause a delay in the progress of the Work or an increase to the Contract Sum (as such terms are defined in the Design-Build Contract); the occurrence of any dispute under the Design-Build Contract; and
- (B) during the Operating Period, the occurrence (number and type) of incidents or accidents; the occurrence of partial or full closures of the HOT Lanes (number and length of such closures); Major Maintenance carried out; any complaints made by third parties in respect of the collection and enforcement of tolls and other fees by the Operating Company respecting the HOT Lanes; marketing and public relations activities carried out by the Operating Company in accordance with the approved marketing and public relations plan;
- (C) and such other information as may be reasonably requested by the Concessionaire from time to time. The monthly reports provided by the Operating Company under this Section 8.02(a)(iii) shall be

in addition to any other operational reports required to be prepared and delivered to the Department under the CA in respect of the management, maintenance and operation of the HOT Lanes.

(b) Audit and Tax Preparation. The Operating Company shall provide Concessionaire's internal and external accountants with all information required for them to complete and issue Concessionaire's annual financial statements and tax returns within ninety (90) days after the end of Concessionaire's fiscal year.

(c) Generally Accepted Accounting Principles. The Operating Company shall maintain and prepare all financial statements and accounts required under this Agreement in accordance with generally accepted accounting principles in the United States of America, consistently applied.

Section 8.03 Ownership of Intellectual Property; Royalties and License Fees

(a) All Proprietary Intellectual Property of Operating Company shall remain exclusively the property of the Operating Company, notwithstanding any delivery of copies thereof to the Concessionaire. Upon the expiration or earlier termination of, or any assignment by the Operating Company of its rights under, this Agreement for any reason whatsoever, the Concessionaire and the Department shall have a nonexclusive, nontransferable, irrevocable fully paid up license to use the Proprietary Intellectual Property of the Operating Company solely in connection with the Project. The Concessionaire shall not at any time sell any such Proprietary Intellectual Property or use or allow any Person to use any such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Project. The Concessionaire shall not disclose any Proprietary Intellectual Property of Operating Company (other than to contractors, subcontractors, employees, attorneys and agents in connection with the Project who agree to be bound by any confidentiality obligations of the Concessionaire relating thereto) and the Concessionaire shall enter into a confidentiality agreement reasonably requested by the Operating Company with respect to any such Proprietary Intellectual Property. The Operating Company shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(b) The Operating Company agrees that the Department shall have the right to purchase from the Operating Company a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of Operating Company on any other tolled state highway owned and operated by the Department or other State agency on commercially reasonable terms.

(c) With respect to any Proprietary Intellectual Property owned by a Person other than the Operating Company, Concessionaire or the Department, the Operating Company shall use commercially reasonable efforts to obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner, for Concessionaire and the Department, nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) licenses to use such Proprietary Intellectual Property solely in connection with the Project, of at least identical scope, purpose, duration and applicability as the licenses granted by Section 8.03(a) above; *provided, however*, Operating

Company shall not contract with any Person from whom such a license is not provided without Concessionaire's written consent. The Operating Company shall use commercially reasonable efforts to obtain from such owner a right in favor of the Department to purchase from such owner a nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) license to use such owner's Proprietary Intellectual Property on any other tolled state highway owned and operated by the Department or other State agency on commercially reasonable terms. The limitations on sale and disclosure by Operating Company set forth in Section 8.03(a) above shall also apply to the Operating Company's, Concessionaire's and the Department's licenses in such Proprietary Intellectual Property.

(d) The Operating Company's name and/or other trademarks, service marks and tradenames owned by the Operating Company (the "Operating Company Marks") may appear on some of the Project-related assets, including supplies, materials, stationery and similar consumable items on the last day of the term hereof. The Parties agree that the Operating Company shall remain the owner of the Operating Company Marks at the end of the term hereof, and the Operating Company may remove, at its expense, the Operating Company Marks prior to the end of the term. The Concessionaire acknowledges and agrees that it shall have no right, title, interest or license in the Operating Company Marks.

(e) The Operating Company shall comply with the Concessionaire's reasonable direction, and agrees to execute further agreements as may be required, in order that the Operating Company and Concessionaire, as applicable, may fulfill their obligations under Section 18.06 of the CA.

Section 8.04 License of Concessionaire Proprietary Intellectual Property

The Concessionaire hereby grants the Operating Company a nonexclusive, nontransferable, fully paid up license to use all Proprietary Intellectual Property of Concessionaire solely for use in the performance of the Operating Company's obligations under this Agreement. Such license shall automatically expire immediately upon the termination or expiration of this Agreement.

Section 8.05 Branding Exclusivity

The Operating Company shall use only the name the Concessionaire gives to the I-95 HOT Lanes.

ARTICLE 9

COMPENSATION; REIMBURSEMENT OF COSTS; BANK ACCOUNT

Section 9.01 Compensation; Reimbursement of Costs

(a) Subject to the limitations set forth in Section 3.01, unless the parties have agreed to a fixed price structure in accordance with Section 9.02, the Concessionaire shall pay or reimburse the Operating Company for its services under this Agreement during the OSSA Term, in accordance with Section 9.03 as set forth in the following sections of this Article.

(b) Commencing on Financial Close and during the Construction Period, for the services set forth in Sections 3.03 and 3.04 and listed in Exhibit C:

(i) the Concessionaire shall pay the Operating Company's allocable Fully Burdened Costs (including overhead and fringe benefits) for services provided by its own personnel or an Affiliate;

(ii) the Concessionaire shall pay the Operating Company's documented third-party contract costs for confirmed services provided by a third-party.

(c) Prior to the Service Commencement Date and during the Operating Period, for the services set forth in Sections 3.05 and 3.06 and listed in Exhibit C:

(i) except for the services provided by quoted rates pursuant to Section 9.01(d), the Concessionaire shall pay the Operating Company's allocable Fully Burdened Costs (including overhead and fringe benefits) plus a 12.5% margin (subject to state and federal reimbursement and audit requirements and Section 24.02(d)(iii) of the CA) for services provided by its own personnel or an Affiliate;

(ii) the Concessionaire shall pay the Operating Company's documented third-party contract costs plus a 12.5% margin (subject to state and federal reimbursement and audit requirements) for confirmed services provided by a third-party (except for third parties that have contracted directly with the Concessionaire); and

(iii) the Concessionaire shall pay the Operating Company an annual fee of \$500,000 for corporate administration and financial services beginning on the Service Commencement Date, which amount shall be escalated in accordance with increases in the CPI from the Service Commencement Date, using the CPI published for the calendar year immediately preceding the year of such payment.

(d) For Additional Services set forth in Section 3.07 and as listed in Exhibit C:

(i) except as otherwise agreed by the Concessionaire and the Operating Company, the Concessionaire shall pay the Operating Company's quoted rates (as the same are set forth in the applicable Approved Budget) plus a 12.5% margin (subject to state and federal reimbursement and audit requirements and Section 24.02(d)(iii) of the CA) for services provided by its own personnel or an Affiliate; and

(ii) except as otherwise agreed by the Concessionaire and the Operating Company, the Concessionaire shall pay the Operating Company's documented third-party contract costs plus a 12.5% margin (subject to state and federal reimbursement and audit requirements) for confirmed services provided by a third-party in accordance with Section 9.03.

(e) If use of the 12.5% margin set forth above becomes prohibited by applicable Law or state and federal reimbursement and audit requirements, then the parties shall agree as part of the process of preparing the Annual Budget to a fixed margin that would reasonably be expected provide comparable compensation to the Operating Company for the applicable Agreement Year.

Section 9.02 Fixed Fee Structure

At any time after the second anniversary of the Service Commencement Date, upon the request of either party, the parties shall negotiate in good faith with a view to agreeing upon a fixed-price structure using the previous period costs, for the services provided hereunder (excluding performance of Major Maintenance obligations).

Section 9.03 Payment Procedure

(a) Within thirty (30) days of the end of each calendar month following Financial Close, the Operating Company shall submit to the Concessionaire an invoice, with reasonably documented supporting information, setting forth amounts due and payable in accordance with Sections 9.01 or 9.02 for services rendered during such month.

(b) If there is a dispute about any amount invoiced by the Operating Company under Section 9.03(a), the amount not in dispute shall be paid as provided in Sections 9.03(c) and 9.05, and any disputed amount which is ultimately determined to have been payable in accordance with Section 14.01 shall be paid, when so determined to have been payable, with interest in accordance with the provisions of Section 9.04. The Concessionaire shall notify the Operating Company in writing of any objection(s) it may have to full payment of an invoice within thirty (30) days of receipt of an invoice from the Operating Company, including the item and amount in dispute and the specific cause of the objection(s); *provided*, however, that failure to provide such notice shall not affect Concessionaire's right to dispute the propriety of amounts previously paid, whether based on audit results or otherwise. Any dispute over invoiced amounts shall be resolved in accordance with the dispute resolution provisions set forth in Article 14 of this Agreement.

(c) All payments made by the Concessionaire to the Operating Company under this Article 9 shall be paid to the Operating Company within thirty (30) days of receipt of the invoice by the Concessionaire in accordance with the provisions of Sections 2.2-4347 through 4355 of the Virginia Code. The Operating Company is authorized to withdraw the funds for any authorized expenditure from the Account.

(d) Upon receipt from third parties contracted directly with the Concessionaire of such invoices and/or other documentation as may be necessary to confirm services rendered and amounts due, the Operating Company shall pay from the Account all amounts due and payable for the costs of third-party contracts.

Section 9.04 Interest on Overdue Amounts

Any amount not paid when due under this Agreement shall bear interest from the date such payment is due until payment is made (after as well as before judgment) at a variable rate per annum at all times equal to the Bank Rate, which interest shall be payable on demand.

Section 9.05 Bank Account

The Concessionaire and Operating Company shall cause an account (the "Account") to be established in Concessionaire's name to be established and maintained with an insured

financial institution as to which each of the Concessionaire and the Operating Company shall have signing authority. The Concessionaire shall cause to be deposited to the Account funds withdrawn from the “Revenue Account” (or similar lockbox account) maintained under the terms of the documents governing Concessionaire Debt or from other funding sources Concessionaire determines to utilize, from which the Operating Company may withdraw amounts payable to it or under authorized subcontracts with third-parties, in each case, in accordance with Section 9.03; provided, the Operating Company may not reimburse itself for disputed items.

ARTICLE 10

INDEMNIFICATION AND INSURANCE

Section 10.01 Indemnification; Exculpation

(a) Agreement to Indemnify. (i) The Concessionaire agrees to indemnify and hold harmless Operating Company and its affiliates, successors and assigns, and all of their respective officers, directors, partners, shareholders, employees (including “contract” employees), agents, and controlling persons (“Operating Company Indemnitees”), against any and all costs, losses, liabilities, demands, actions, expenses (including reasonable attorneys’ fees), judgments, fines, charges and amounts paid in settlement actually and reasonably incurred (collectively, “Losses”) in connection with third-party claims that are asserted at any time against any Operating Company Indemnitee that result from or are based upon the gross negligence or willful misconduct of the Concessionaire.

(ii) The Operating Company agrees to indemnify and hold harmless Concessionaire, and any of Concessionaire’s other direct or indirect subsidiaries, their members, and their affiliates, successors and assigns, and all of their respective officers, directors, partners, shareholders, employees, agents and controlling persons and Lenders (“Concessionaire Indemnitees”) against any and all Losses in connection with third-party claims that are asserted at any time against any Concessionaire Indemnitee that result from or are based upon the gross negligence or willful misconduct of Operating Company.

(b) Control of Defense. Promptly upon learning of any grounds that may reasonably and foreseeably lead to a claim under any provision of this Agreement, which provision provides for indemnification of one party by another (a “Potential Indemnity Claim”) by any party hereto (the “Indemnified Party”) against the other party hereto (the “Indemnifying Party”), the Indemnified Party shall promptly notify the Indemnifying Party of such grounds in writing, provided that the Indemnifying Party can provide evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party has the financial ability to satisfy the Potential Indemnity Claim, the Indemnifying Party shall have the right, but not the obligation, to defend, contest and control the defense of any such Potential Indemnity Claim, including choosing counsel and controlling any settlement of the Potential Indemnity Claim, *provided, however*, the Indemnifying Party shall not compromise or settle any Potential Indemnity Claim without the prior written consent of the Indemnified Party, unless such compromise or settlement does not admit liability or culpability of the Indemnified Party and includes an unconditionally release from liability of the Indemnified Party. If, at any time prior to the conclusion of such defense or contest, there are reasonable grounds to believe that the Indemnifying Party does not have the

financial ability to satisfy the Potential Indemnity Claim, the Indemnified Party shall have the right to assume control of such defense or contest, including replacing counsel and controlling any settlement. If the Indemnifying Party reasonably demonstrates the financial ability to satisfy the Potential Indemnity Claim but requests the Indemnified Party to control the defense or contest, the Indemnified Party shall contest any Potential Indemnity Claim in good faith and shall forebear from compromising or settling any Potential Indemnity Claim without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, delayed or conditioned.

(c) Exculpation. No implied covenants by or obligation on the part of Operating Company shall be read into this Agreement.

(d) Insurance. The Parties' obligations under this Section 10.01 are in addition to, and not in limitation of, the insurance coverage to be procured by the Parties under Sections 10.02 and 10.03. No provision of this Agreement is intended to in any way benefit any insurer or to afford any insurer any basis to deny insurance coverage to any insured or additional insured under any policy procured in accordance with this Agreement. Any indemnification payable to a Person with respect to a claim hereunder shall be net of any insurance proceeds paid to such Person with respect to the circumstances giving rise to the indemnitor's obligation to indemnify such Person under this Agreement.

Section 10.02 Concessionaire's Insurance Coverages

(a) The Operating Company, on behalf of the Concessionaire, shall procure policies of insurance required during the Operating Period in accordance with Section 17.01(b) of the CA (the "Concessionaire Insurance"). The Operating Company shall, no later than 30 days prior to the Service Commencement Date, provide the Concessionaire with certificates of insurance evidencing the policies that are satisfactory to the Concessionaire, and shall otherwise deliver to the Department (with copies to the Concessionaire) all copies and certifications when and as required under Section 17.03 of the CA.

(b) The Concessionaire Insurance shall be project specific. Except for professional liability insurance, worker's compensation insurance and employer's liability insurance, the Operating Company and the Department shall be included as an "additional insured" on such insurance policies on a primary, non-contributory basis. These insurance policies shall be endorsed so that the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured, including the Operating Company.

(c) The Concessionaire shall be liable for all deductible payments under such insurance policies unless the loss, damage or claim was caused by the Operating Company's negligence or willful misconduct, in which case the Operating Company shall be liable for the payment of that portion of the deductible amount attributable to the Operating Company's negligence or willful misconduct, subject to the overall limitation on the Operating Company's liability under Section 13.01 hereof.

(d) The cost of such Concessionaire Insurance, to the extent paid by the Operating Company, shall be an operating expense and shall be reimbursed in accordance with Section 9.01.

Section 10.03 Operating Company's Insurance Coverages

During the OSSA Term, the Operating Company shall obtain and maintain (or cause to be obtained and maintained) Workers' Compensation insurance, as prescribed by applicable Law, for the Operating Company's employees performing the Services and provide the Concessionaire with a certificate of insurance evidencing this coverage on or prior to Financial Close.

Section 10.04 Cooperation

The Concessionaire and Operating Company shall promptly notify the other as soon as it becomes aware of any circumstances that could give rise to a claim under the other's insurance policies. Each shall provide the other on request with such information as it may require to enable the other to make or process claims under the insurance or to provide information concerning the insurance to third parties as each may direct.

Section 10.05 Insurance Cure

If either party fails to obtain any of the insurance referred to above, the other party shall, without prejudice to its other rights and remedies, have the right to procure such insurance and to recover the cost from the party that has not obtained the insurance by offset or otherwise.

ARTICLE 11

REPRESENTATIONS AND WARRANTIES

Section 11.01 Concessionaire Representations and Warranties

The Concessionaire hereby represents and warrants to the Operating Company as follows:

(a) The Concessionaire is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to conduct business in the State, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other Project Agreements to which the Concessionaire is a party and to perform each and all of the obligations of the Concessionaire provided for herein and therein.

(b) Each person executing this Agreement or any other Project Agreement on behalf of the Concessionaire to which the Concessionaire is a party has been or at such time will be duly authorized to execute each such document on behalf of the Concessionaire.

(c) Neither the execution and delivery by the Concessionaire of this Agreement and the other Project Agreements executed concurrently herewith to which the Concessionaire is a

party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, investigation or litigation pending and served on the Concessionaire which challenges the Concessionaire's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Concessionaire is a party, or which challenges the authority of the Concessionaire official executing this Agreement or the other Project Agreements, and the Concessionaire has disclosed to the Operating Company any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Concessionaire is aware.

(e) This Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) The Concessionaire has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Project Agreements to which the Concessionaire is a party.

(g) The Concessionaire is in material compliance with all Law and Governmental Approvals applicable to the Project and its activities in connection with this Agreement.

Section 11.02 Operating Company Representations and Warranties

The Operating Company hereby represents and warrants to the Concessionaire and the Department as follows:

(a) The Operating Company is a duly organized corporation created under the laws of the State of Delaware, is qualified to conduct business in the State, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other Project Agreements to which the Operating Company is a party and to perform each and all of the obligations of the Operating Company provided for herein and therein.

(b) The Operating Company has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Project Agreements to which the Operating Company is a party.

(c) Each person executing this Agreement or any other Project Agreement on behalf of the Operating Company has been or will at such time be duly authorized to execute each such document on behalf of the Operating Company.

(d) This Agreement has been duly authorized, executed and delivered by the Operating Company and constitutes a valid and legally binding obligation of the Operating

Company, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(e) Neither the execution and delivery by the Operating Company of this Agreement and the other Project Agreements to which the Operating Company is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Operating Company or any other agreements or instruments to which it is a party or by which it is bound.

(f) There is no action, suit, proceeding, investigation or litigation pending and served on the Operating Company which challenges the Operating Company's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Operating Company is a party, or which challenges the authority of the Operating Company official executing this Agreement or the other Project Agreements; and the Operating Company has disclosed to the Concessionaire any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Operating Company is aware.

(g) The Operating Company is in material compliance with all Law and Governmental Approvals applicable to the Operating Company, the Project or its activities in connection with this Agreement and the other Project Agreements.

(h) None of the Operating Company or any affiliate of the Operating Company (as "affiliate" is defined in 29 CFR 98.905) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or State department or agency.

Section 11.03 Survival of Representations and Warranties

The representations and warranties of the Concessionaire and the Operating Company contained herein shall survive expiration or earlier termination of this Agreement and the other Project Agreements.

Section 11.04 Department as Third Party Beneficiary

(a) It is the intention of the parties hereto that the Department be a third party beneficiary of Sections 11.02 and 11.03 and each of the parties hereto agree that the Department shall be entitled to enforce the rights created in its favor under Sections 11.02 and 11.03 directly and in its own name; provided, that the Department will have the right to exercise its rights under such representations and warranties only so long as the Concessionaire or a Lender is not pursuing remedies thereunder.

(b) All subcontracts that the Operating Company enters into shall name the Department as a third-party beneficiary of all subcontractor representations and warranties contained in such Contract; provided, that the Department will have the right to exercise its rights under such representations and warranties only so long as the Concessionaire, the Operating Company or a Lender is not pursuing remedies thereunder.

ARTICLE 12

OSSA TERM AND TERMINATION

Section 12.01 OSSA Contract Term

The term of this Agreement shall commence on Financial Close, and shall remain in effect until the end of the Term (as such term is defined in the CA), or earlier termination of this Agreement pursuant to this Article 12, or the termination of the CA (the "OSSA Term").

Section 12.02 Termination Upon Expiration of OSSA Term

Unless earlier terminated in accordance with the terms of this Article 12 or the other Project Agreements, all the rights and obligations of the parties hereunder and thereunder shall cease and terminate without notice or demand on the last day of the OSSA Term; *provided, however*, the indemnities in Section 10.01, and the parties' rights and obligations under Article 14, shall survive expiration or earlier termination of this Agreement.

Section 12.03 Default Termination; Termination by Department

(a) The Concessionaire is entitled to terminate this Agreement as provided in Section 12.05. In the case of such termination for Operating Company Default no compensation would be payable to the Operating Company as a result of such termination subject to Section 12.08(c).

(b) The Operating Company is entitled to terminate this Agreement only in the event of a material default by the Concessionaire as described in Section 12.06, subject to the limitations set forth therein and in Section 12.07(d).

(c) The Operating Company agrees that following termination of the CA, this Agreement can be terminated by the Department at its election, without penalty, upon notice by the Department to the Operating Company in accordance with Section 24.02(d)(i) of the CA.

Section 12.04 Operating Company Default

The occurrence of any one or more of the following events during the OSSA Term shall constitute an "Operating Company Default" under this Agreement:

(a) Any material representation or warranty made by the Operating Company herein or in any other Project Agreement is inaccurate or misleading in any respect on the date made and a material adverse effect upon the Project or the Concessionaire's rights or obligations under the Project Agreements results therefrom, and such misrepresentation is not cured within a period of 30 days following written notice thereof;

(b) The Operating Company on behalf of the Concessionaire fails to pay to the Department when due all monies payable to the Department under this Agreement or any other Project Agreement or fails to pay any third parties when due all monies payable to such third parties under any authorized subcontract in accordance with this Agreement or fails to deposit

funds to any reserve or account in the amount and within the time period required by the CA (unless any such failure results from failure by the Concessionaire to make funds available to the Operating Company), and such failure continues unremedied for a period of thirty (30) days following written notice thereof;

(c) The Operating Company fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement or any other Project Agreement, including material failure to perform any Work relating to the operation and maintenance of the Project or any material portion thereof in accordance with this Agreement, and such failure continues unremedied for a period of thirty (30) days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire or the Department (as appropriate) to the Operating Company or for such longer period as agreed by the Concessionaire which may be reasonably necessary to cure such failure, *provided*, in the latter case, that the Operating Company has demonstrated to the satisfaction of the Concessionaire or the Department (as appropriate), acting reasonably, that (i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire or the Department (as appropriate), and (iii) such failure is in fact cured within such period of time;

(d) This Agreement or all or any portion of the Operating Company's interest is transferred in contravention of Section 15.01;

(e) The Operating Company (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Operating Company files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Operating Company, or of all or any substantial part of its properties or of the Project or any interest therein, or (iv) takes any action in furtherance of any action described in this paragraph; or

(f) Within 90 days after the commencement of any proceeding against the Operating Company seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or, within 90 days after the appointment, without the consent or acquiescence of the Operating Company, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Operating Company or of all or any substantial part of its properties or of the Project or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or, within 90 days after the expiration of any such stay, such appointment has not been vacated.

Section 12.05 Concessionaire Remedies upon Operating Company Default

Upon the occurrence of an Operating Company Default, the Concessionaire may, by notice to the Operating Company with a copy to the Department in accordance with the terms hereof, declare the Operating Company to be in default and may do any or all of the following as it, in its discretion, shall determine:

- (a) The Concessionaire may terminate this Agreement; and/or
- (b) The Concessionaire may exercise any of its rights and remedies at law or in equity; and/or
- (c) The Concessionaire may exercise any of its other rights and remedies provided for hereunder.

Section 12.06 Concessionaire Defaults

The occurrence of any one or more of the following events during the OSSA Term shall constitute a "Concessionaire Default" under this Agreement:

(a) The Concessionaire fails to pay to the Operating Company when due all monies payable to the Operating Company under this Agreement (other than amounts disputed in good faith by the Concessionaire in accordance with Section 14.01, but only to the extent that such amounts are not required to be made available to pay for material work or services required to be performed hereunder), and such failure continues unremedied for a period of 90 days following written notice thereof; or

(b) The Concessionaire (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Department files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire, or of all or any substantial part of its properties (in each case, to the extent applicable to a state agency), or (iv) takes any action in furtherance of any action described in this paragraph; or if within 90 days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or, within 90 days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties (in each case, to the extent applicable to a state agency), such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated.

Section 12.07 Remedies of the Operating Company upon Concessionaire Default

Upon the occurrence of a Concessionaire Default by the Concessionaire under this Agreement, the Operating Company may by notice to the Concessionaire declare the Concessionaire to be in default and may, subject to the provisions of Section 12.06, do any or all of the following as the Operating Company, in its discretion, shall determine:

- (a) The Operating Company may terminate this Agreement; and/or
- (b) The Operating Company may exercise any of its rights and remedies at law or in equity; and/or
- (c) The Operating Company may exercise any of its other rights and remedies provided for hereunder.

Any right of Operating Company to terminate this Agreement shall be subject to all cure rights of the Department and the Lenders (or the Collateral Agent acting on the behalf of the Lenders). Upon provision of notice to the Concessionaire, the Operating Company will provide notice concurrently to the Department.

Section 12.08 Operating Company Actions Upon Termination

(a) On the effective date of termination of this Agreement or the Operating Company's rights hereunder, whether due to expiration or earlier termination of the OSSA Term, the Operating Company shall deliver to the Concessionaire without prejudice to its rights under Article 14:

- (i) all tangible personal property, reports, books, records, Work Product and Intellectual Property owned by the Concessionaire and the Department relating to the Project, the Work or operation of the HOT Lanes;
- (ii) possession and control of the Project and Project Right of Way, free and clear of any and all Liens and encumbrances created, incurred or suffered by the Operating Company or anyone claiming under the Operating Company; and
- (iii) all other intangible personal property used or owned by any Operating Company party and relating to or derived from the Project, the Work or operation of the HOT Lanes;

in each case, solely with respect to the Services that the Concessionaire would be required to deliver to the Department if the Concessionaire had performed the Services under the CA.

(b) The Concessionaire shall, as of the effective date of termination of this Agreement or the Operating Company's rights hereunder, whether due to expiration or earlier termination of the OSSA Term, assume full responsibility for the Services, and as of such date, the Operating Company shall have no liability or responsibility for such Services, occurring after such date; *provided*, that the Concessionaire and the Operating Company shall remain fully responsible for all of their respective obligations or liabilities under this Agreement arising

before the effective date of termination and those obligations under this Agreement that are stated to or by their nature must survive termination.

(c) Each of the Operating Company and the Concessionaire shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the effective date of termination of this Agreement or the Operating Company's rights hereunder, whether due to expiration or earlier termination of the OSSA Term, and the Operating Company shall not be liable for any costs, expenses and amounts incurred in connection with the Services on and after such date, except to the extent such costs, expenses and amounts are properly included in the measure of any damages due to the Concessionaire arising from a default by the Operating Company under this Agreement.

Section 12.09 Liability After Termination

(a) If this Agreement or any other Project Agreement is terminated by reason of an Operating Company Default or a Concessionaire Default, such termination shall not excuse the defaulting party from any liability at law or in equity arising out of such default or in the Project Agreements.

(b) If this Agreement or any other Project Agreement is terminated for reason other than a default, no party shall have any further obligation or liability except for performance of their respective obligations which are either expressly stated in a Project Agreement to survive termination or by their sense and context are intended to survive termination.

Section 12.10 Exclusive Termination Remedies

This Article 12 sets forth the entire and exclusive provisions and rights of the Concessionaire and the Operating Company regarding termination of this Agreement and the Project Agreements, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Law.

Section 12.11 Performance in Favor of Lenders and the Department

The Operating Company agrees that in the event of a default by the Concessionaire under the terms and conditions of any agreement between the Concessionaire and the Department or the Concessionaire and any Lender party, the Department and/or the Lenders shall be entitled to use and enforce this Agreement, as the same may be amended or supplemented before or after such default, all without additional cost to the Department or the Lenders. In the event the Department or any Lender notifies the Operating Company in writing that Concessionaire has defaulted under any agreement between the Concessionaire and the Lenders and/or any agreement between Concessionaire and the Department and requests Operating Company to continue performance under this Agreement, the Operating Company shall thereafter perform hereunder in accordance with the terms and provisions hereof, so long as the Operating Company shall be paid in accordance with this Agreement for the Services performed hereunder, including, solely in the case of an assumption of this Agreement by any Lender or its designee, payment of any sums due to the Operating Company for the Services performed to and including the date of Concessionaire's default. If the Department succeeds to the Concessionaire's rights under this Agreement (by assignment or otherwise), then the Operating Company agrees that it

will (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged, (B) permit audit thereof by the Concessionaire, and provide progress reports to the Concessionaire appropriate for operations and maintenance contracts sufficient to enable the Concessionaire to provide the reports it is required to furnish the Department pursuant to the CA and (C) allow the Department to assume the benefit of the Concessionaire's contract rights and the work performed hereunder, with liability only for those remaining obligations accruing after the date of assumption, but excluding any monetary claims or obligations that the Concessionaire may have against the Operating Company that existed prior to the Department's assumption of this Agreement. The Operating Company will consent to such other agreements with respect to the Department's and/or the Lenders' enforcement of their liens and security interests as the Department and/or the Lenders may reasonably request.

ARTICLE 13

LIMITATIONS OF LIABILITY

Section 13.01 Total Limitation of Liability

The Operating Company's total liability during the OSSA Term to the Concessionaire in any Agreement Year on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the OSSA Term, shall in no case exceed an amount equal to the aggregate amounts paid to Operating Company pursuant to Sections 9.01 and 9.02 for the Agreement Year (annualized in the case of any partial Agreement Year during the OSSA Term) in which the basis for the claim first occurred (without regard for when the claim is first made); *provided, however*, the foregoing limitation on liability shall not apply to (i) indemnities payable by Operating Company under Section 10.01(a)(ii), or (ii) proceeds of insurance received by Operating Company. This limitation of the Operating Company's total liability to the Concessionaire in any Agreement Year shall apply regardless of whether the claim continues beyond the Agreement Year in which the basis of the claim first occurred, i.e., there shall be no aggregation of the amounts paid to Operating Company pursuant to Sections 9.01 and 9.02 in more than one Agreement Year in calculating the Operating Company's total liability to the Concessionaire in any Agreement Year. Except as previously asserted by the Concessionaire as provided in Section 15.08, the Operating Company's liability under this Agreement shall cease 365 days after expiration, or earlier termination, of this Agreement; *provided, however*, the indemnities in Section 10.01 shall survive expiration or earlier termination of this Agreement.

Section 13.02 Limitation on Consequential Damages

(a) Except as expressly provided in this Agreement to the contrary, neither party shall be liable to the other for indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory. The foregoing limitation shall not, however, in any manner:

(i) limit either party's liability for any type of damage arising out of its obligation to indemnify, defend and hold the other party or any other Indemnified Party harmless from Third-Party Claims under Section 10 and elsewhere in this Agreement; and

(ii) limit either party's liability for any type of damage to the extent covered by insurance required hereunder.

ARTICLE 14

DISPUTE RESOLUTION

Section 14.01 Dispute Resolution

(a) Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Section 14.01.

(b) The parties shall attempt in good faith to resolve the dispute within fifteen (15) days or such other time period as may be specifically established for such dispute under this Agreement. If the parties are unable to resolve the dispute within that timeframe, and upon notice by either party to the other, the dispute shall be referred to mediation or any other form of alternative dispute resolution that is acceptable to both of them. They must share equally the expenses of the mediator or other alternative dispute resolution process. If, after 180 days following the date of the referral, the dispute remains unresolved, then either party may litigate the matter in a court of law as set forth in Section 14.01(c).

(c) All litigation between the parties arising out of or pertaining to this Agreement or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which shall have exclusive jurisdiction and venue; *provided* that the foregoing does not affect any claims or matters which are governed by a different dispute resolution procedure set forth in any other Project Agreement.

(d) Each party shall bear its own attorneys' fees and costs in any dispute or litigation arising out of or pertaining to this Agreement or any other Project Agreement, and no party shall seek or accept an award of attorneys' fees or costs, except as otherwise expressly set forth in this Agreement.

ARTICLE 15

MISCELLANEOUS

Section 15.01 Assignment by the Operating Company

(a) Neither party hereto shall have the right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other party, which consent may be granted or withheld in the sole discretion of such other party; *provided*, that (i) the Operating Company may assign its rights hereunder to an Affiliate of the Operating Company approved by the Department in accordance with the requirements of the CA, and (ii) Concessionaire may assign all of its rights

and interests in and under this Agreement to the Lenders and the Collateral Agent as collateral security for its obligations. The Lenders and the Collateral Agent may further assign such rights without Operating Company's consent thereto in connection with the exercise of remedies against the Concessionaire; and *provided*, further, that upon termination of this Agreement, this Agreement will be fully assignable by the Concessionaire to the Department at the election of the Department, such assignability to include the benefit of all of the Operating Company's warranties, indemnities, guarantees and obligations of professional responsibility arising under this Agreement.

(b) [Not used]

(c) All of the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

Section 15.02 Authorized Representatives

Concessionaire Authorized Representative:

President
95 Express Lanes LLC
6440 General Green Way, Room 95
Alexandria, VA 22312
Telephone: (571) 419-6100
Fax: (571) 419- 6101

Operating Company Authorized Representative:

President
Transurban (USA) Operations, Inc.
6440 General Green Way
Alexandria, VA 22312
Telephone: (646) 278-0870
Fax: (646) 278-0839

Section 15.03 Notices

(a) Whenever under the provisions of this Agreement it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing, and shall not be effective for any purpose unless and until actually received by the addressee or unless served (a) personally, (b) by independent, reputable, overnight commercial courier, (c) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by

service of the original of the subject item in another manner permitted herein, or (d) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Concessionaire:

President
95 Express Lanes LLC
6440 General Green Way, Room 95
Alexandria, VA 22312
Telephone: (571) 419-6100
Fax: (571) 419- 6101

If to the Operating Company:

President
Transurban (USA) Operations, Inc.
6440 General Green Way
Alexandria, VA 22312
Telephone: (646) 278-0870
Fax: (646) 278-0839

(b) Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

Section 15.04 Binding Effect

Subject to the limitations of Section 15.01, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Agreement is made to any of the parties hereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

Section 15.05 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement, except rights expressly contained

herein for the benefit of the Department and the Lenders and/or the Collateral Agent. The parties agree to look solely to each other with respect to the obligations and liability arising in connection with this Agreement and the services performed hereunder. No claims shall be asserted directly by the Operating Company against the Department or the Design-Build Contractor (whether arising in contract or tort); rather, such matters, if any, shall be asserted through the Concessionaire. Such matters will not be treated as “third party claims” in connection with indemnity obligations under this Agreement or the Design-Build Contract. This Section 15.05 shall not limit contribution or other claims for bodily injury, death or third party property damage.

Section 15.06 Waiver

(a) No waiver by any party of any right or remedy under this Agreement or the other Project Agreements shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other Project Agreements. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(b) No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under this Agreement or any other Project Agreement, or to relieve the other party from the full performance of its obligations under this Agreement and the other Project Agreements.

(c) No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party.

(d) The acceptance of any payment or reimbursement by a party shall not: (i) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Agreement, other than the other party’s prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party’s knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement; or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

(e) No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

Section 15.07 Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to the conflict of laws provisions of such laws.

Section 15.08 Survival

All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the date of this Agreement and at and as of all other applicable times during the OSSA Term. All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement and shall not be waived by the execution and delivery of this Agreement, by completion of construction, by any investigation by the Department or by any other event except a specific written waiver by the party against whom waiver is asserted.

Section 15.09 Construction and Interpretation of Agreement

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against either party, and instead other rules of interpretation and construction shall be utilized.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

(c) The captions of the articles and sections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires

the contrary. All references to a subsection or clause “above” or “below” refer to the denoted subsection or clause within the section in which the reference appears. Unless expressly provided otherwise, all references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the Project Agreements, words which have well-known technical or construction industry meanings are used in this Agreement or the Project Agreements in accordance with such recognized meaning. Wherever the word “including,” “includes” or “include” is used in this Agreement or the Project Agreements, except where immediately preceded by the word “not”, it will be deemed to be followed by the words “without limitation”. Wherever reference is made in the Project Agreements to a particular Governmental Authority, it includes any public agency succeeding to the powers and authority of such Governmental Authority.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

(f) To the extent any provisions of this Agreement conflict with any provisions of the CA, the parties agree that the CA’s provisions shall govern.

Section 15.10 Counterpart

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 15.11 Entire Agreement

THIS AGREEMENT AND THE PROJECT AGREEMENTS CONSTITUTE THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN AND THEREIN. ALL PRIOR WRITTEN AND PRIOR OR CONTEMPORANEOUS VERBAL AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND/OR PRACTICES RELATIVE TO THE FOREGOING ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS AGREEMENT MAY BE ALTERED, AMENDED OR REVOKED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY DULY AUTHORIZED REPRESENTATIVES OF EACH PARTY HERETO, OR ITS PERMITTED SUCCESSOR OR ASSIGNEE. NO VERBAL AGREEMENT OR IMPLIED COVENANT SHALL BE HELD TO VARY THE TERMS HEREOF, ANY STATUTE, LAW OR CUSTOM TO THE CONTRARY NOTWITHSTANDING.

Section 15.12 Amendment

No modification, amendment, or other changes will be binding on any party unless consented to in writing and signed by Concessionaire’s and Operating Company’s authorized representatives and approval has been received from the Department where required in accordance with Section 24.02(1) of the CA. To the extent requirements and rights and responsibilities of the Concessionaire and/or the Operating Company have not been addressed in this Agreement and the CA or a party requests to change one or more existing requirements and rights and responsibilities of the Concessionaire and/or the Operating Company, the parties agree

to negotiate in good faith regarding their respective existing or new responsibilities in the spirit of cooperation contemplated by this Agreement and the CA.

Section 15.13 No Partnership Intended

Nothing in this Agreement shall be deemed or construed to create a co-partnership or joint venture between the parties hereto and the services of the Operating Company shall be rendered as an independent contractor and not as an agent for the Concessionaire.

Section 15.14 Confidentiality

(a) Except as otherwise provided in this Section 15.14, the Operating Company's financial statements and financial results may be used and disclosed by Concessionaire to any of Concessionaire's other direct or indirect subsidiaries or any of their members.

(b) Neither party nor any of their direct or indirect subsidiaries or any of their members may disclose or permit the disclosure of any of the terms of this Agreement or of any other confidential, non-public or proprietary information relating to the investments, business plans, strategies, due diligence results, financing commitments, bids and prospective bids of Concessionaire or any of its assets (collectively, "Confidential Information"), except that such disclosure may be made (i) to any Person who is a member, partner, officer, investor, director or employee of such member or counsel to or accountants of such member solely for their use and on a need-to-know basis, as long as such persons are notified of the confidentiality obligations hereunder, or to the Department and its representatives, (ii) with the prior consent of the other parties hereto, (iii) subject to the next paragraph, in response to a subpoena or order issued by a court, arbitrator or governmental body, agency or official or (iv) to any lender providing financing to Concessionaire or any of its assets.

(c) If a party hereto receives a request or demand to disclose any Confidential Information under a subpoena or order, that party shall (i) promptly notify the other parties thereof, (ii) consult with the other parties on the advisability of taking steps to resist or narrow that request or demand and (iii) if disclosure is required or deemed advisable, cooperate with any of the other parties to obtain an order or other assurance that confidential treatment will be accorded the Confidential Information that is disclosed.

(d) No party hereto may issue or publish any press release or other public communication about the formation, existence or affairs of Concessionaire or any of its assets, without the express written consent of the other party hereto.

(e) Each of the parties to the proposed transactions described herein (and each employee, representative or other agent thereof) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions described herein and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the

federal income tax treatment of the proposed transaction but does not include the identity of the parties or their respective affiliates.

Section 15.15 Notice of Claims

The Operating Company shall promptly notify Concessionaire in writing of any and all litigation and claims made or threatened against the Project, Concessionaire, or Operating Company.


Section 15.16 No Liens or Encumbrances

The Operating Company shall keep and maintain the Project and the Project Right of Way, as applicable, free and clear of all liens and encumbrances arising out of its performance of, or failure to perform, the Services.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

95 EXPRESS LANES LLC

By: 
Name: Michelle Le-Plante
Title: Attorney-in-Fact

TRANSURBAN (USA) OPERATIONS INC.


By: 
Name: Michelle La Plante
Title: Attorney-in-Fact

EXHIBIT A – DEFINITIONS

Account is defined in Section 9.05.

Additional Services are defined in Section 3.07.

Affiliate means “Affiliate” as defined in Exhibit A (Definitions) to the CA.

Agreement means this Agreement and all exhibits and schedules thereto, as supplemented or further amended from time to time.

Agreement Year means (a) the period beginning on the Financial Close Date and ending on the first June 30 (or, if the Concessionaire has a fiscal year ending December 31 and so elects, ending on the first December 31) following the Financial Close Date, (b) each succeeding full calendar year or full fiscal year, as relevant, during which the Agreement remains in effect, and (c) the period beginning on July 1 or January 1 of the calendar year or fiscal year, as relevant, in which the Agreement terminates and ending on the date of termination.

Annual Budget means a comprehensive annual budget (includes an operating budget and a capital budget, as appropriate) for each Agreement Year that the Operating Company must prepare annually in accordance with Section 3.01.

Approved Budget means the Annual Budget approved by the Concessionaire in accordance with the process described in Section 3.01(c).

Approved Life Cycle Maintenance Plan means the Life Cycle Maintenance Plan approved by the Concessionaire and the Department in accordance with the process described in Section 3.01(d).

Assets means each “Asset” as defined in Exhibit A (Definitions) to the CA.

CA has the meaning given in the Recitals.

Base Case Financial Model Update means a “Base Case Financial Model Update” as defined in Exhibit A (Definitions) to the CA.

Beltway OSSA means that certain Amended and Restated Operating and Support Services Agreement for the Capital Beltway Project dated as of June 12, 2008 by and between Capital Beltway Express, LLC and the Operating Company.

Beltway Project means the “Project” as used in the Beltway OSSA.

Business Day means any day other than a Saturday, Sunday or other day observed as a holiday by either the State or the U.S. government.

Change Order means a “Change Order” as defined in Exhibit A (Definitions) to the CA.

Collateral Agent means the “Collateral Agent” as defined in Exhibit A (Definitions) to the CA.

Commencement Date means the “Commencement Date” as defined in Section 1.1 of the Design-Build Contract.

Concessionaire means 95 Express Lanes LLC and its permitted successors and assigns.

Concessionaire Debt means “Concessionaire Debt” as defined in Exhibit A (Definitions) to the CA.

Concessionaire Default is defined in Section 12.06.

Concessionaire Indemnatee is defined in Section 10.01.

Concessionaire Insurance is defined in Section 10.02.

Concessionaire LLC Agreement means the Limited Liability Company Agreement of the Concessionaire dated as of July 26, 2012, as modified, amended or restated from time to time.

Concessionaire’s Field Representative means the “Concessionaire’s Field Representative” as defined in Section 1.1 of the Design-Build Contract.

Concessionaire’s Project Manager means the “Concessionaire’s Project Manager” as defined in Section 1.1 of the Design-Build Contract.

Confidential Information is defined in Section 15.14(b).

Construction Period means the period commencing on the Commencement Date through the Service Commencement Date.

CPI means the “Consumer Price Index for all Urban Consumers” for Northern Virginia (not seasonally adjusted), or its successor, of the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; *provided*, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor.

Department means the Virginia Department of Transportation, an agency of the State, and any other state agency succeeding to the powers, authorities and responsibilities of the Department invoked by or under the CA.

Design-Build Contract means the “Design-Build Contract” as defined in Exhibit A (Definitions) to the CA.

Design-Build Contractor means the “Design-Build Contractor” as defined in Exhibit A (Definitions) to the CA.

Distributions means each “Distribution” as defined in Exhibit A (Definitions) to the CA.

ETC Agreement means the Electronic Toll Collection Services Agreement dated as of December 19, 2007 between the Concessionaire and the Department, as it may be amended or supplemented.

ETTM System means the “ETTM System” as defined in Exhibit A (Definitions) to the CA.

Final Acceptance Date means the “Final Acceptance Date” as defined in Exhibit A (Definitions) to the CA.

Financial Close means “Financial Close” as defined in Exhibit A (Definitions) to the CA.

Fully Burdened Costs means the sum of:

(a) the Operating Company’s and an Affiliate’s direct labor costs incurred in performing Services (excluding profit and/or margin) plus an indirect cost rate (including overhead and fringe benefits) to be developed with the cost accounting principles that are generally consistent with Part 31 of the Federal Acquisition Regulations; and

(b) the Operating Company’s and an Affiliate’s non-labor costs incurred in performing Services (excluding profit and/or margin), to be developed with the cost accounting principles that are generally consistent with Part 31 of the Federal Acquisition Regulations.

Good Industry Practice means the industry practices and standards that would be exercised by a prudent and experienced operator or maintenance provider engaged in the same kinds of undertakings and under similar circumstances as those applying to the Services.

Gross Revenues means “Gross Revenues” as defined in Exhibit A (Definitions) to the CA.

Hazardous Substance means “Hazardous Substance” as defined in Exhibit A (Definitions) to the CA.

HOT Lanes means the “HOT Lanes” as defined in Exhibit A (Definitions) to the CA.

Indemnified Party is defined in Section 10.01.

Indemnifying Party is defined in Section 10.01.

Independent Engineer means an independent engineering firm serving as a technical advisor to the Lenders with regard to the Project.

Intellectual Property means the ETTM books and records, Escrow Documents, copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, Source Code and Source Code Documentation, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and

information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project.

Law means all laws, treaties, ordinances, judgments, Federal Requirements, decrees, injunctions, writs and orders of any Governmental Authority, and all rules, regulations, orders, formal interpretations and permits of any Governmental Authority having jurisdiction over construction of the Project on the Project Right of Way, performance of the Work, or operation of the Project, or the health, safety or environmental condition of the Project or the Project Right of Way, as the same may be in effect from time to time. Law includes the Code of Virginia and the Uniform Act.

Lenders means the “Lenders” as defined in Exhibit A (Definitions) to the CA.

Life Cycle Maintenance Plan is defined in Section 3.01(d).

Losses is defined in Section 10.01(a).

Major Maintenance means “Major Maintenance” as defined in Exhibit A (Definitions) to the CA.

Objection Notice is defined in Section 3.01(c).

Operating Company has the meaning given in the first paragraph of this Agreement.

Operating Company Default is defined in Section 12.04.

Operating Company Indemnitee is defined in Section 10.01.

Operating Company Marks is defined in Section 8.03.

Operating Costs means “Operating Costs” as defined in Exhibit A (Definitions) to the CA.

Operating Period means the “Operating Period” as defined in Exhibit A (Definitions) to the CA.

OSSA Agreement Date means the date written on the cover page of the Agreement, which date will be the date on which the parties have executed and delivered the Agreement

OSSA Term is defined in Section 12.01.

Oversight Services means the “Oversight Services” as defined in Exhibit A (Definitions) to the CA.

Person means a “Person” as defined in Exhibit A (Definitions) to the CA.

Potential Indemnity Claim is defined in Section 10.01.

Project means the “Project” as defined in Exhibit A (Definitions) to the CA.

Project Agreements means the “Project Agreements” as defined in Exhibit A (Definitions) to the CA.

Project Enhancements means the “Project Enhancements” as defined in Exhibit A (Definitions) to the CA.

Project Right of Way means the “Project Right of Way” as defined in Exhibit A (Definitions) to the CA.

Proprietary Intellectual Property means any Intellectual Property that is patented or copyrighted by the Operating Company, Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by the Operating Company, Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

Safety Compliance Order means a “Safety Compliance Order” as defined in Exhibit A (Definitions) to the CA.

Service Commencement Date means the “Service Commencement Date” as defined in Exhibit A (Definitions) to the CA.

Services is defined in Article 2.

Shared Facilities Agreement means that certain Shared Facilities Agreement dated as of July 31, 2012 by and between the Concessionaire and Capital Beltway Express, LLC.

Shared Services has the meaning given to such term in the Shared Facilities Agreement.

State Party means a “State Party” as defined in Exhibit A (Definitions) to the CA.

Task is defined in Section 3.01(d).

Technical Requirements means the Technical Requirements included as Exhibit C to the CA, as the same may be revised in accordance with the CA.

Third-Party Agreements is defined in Section 6.02.

Third-Party Claim means any Claim asserted against a Concessionaire Indemnitee by any Person who is not a party to this Agreement or an Affiliate of such party.

Work means the “Work” as defined in Exhibit A (Definitions) to the CA.

Work Product means “Work Product” as defined in Exhibit A (Definitions) to the CA.

EXHIBIT B – INITIAL BUDGET THROUGH FY2013

[See attached.]

**I-95 - Operations and Service Support Agreement
Exhibit B - Initial Budget for FY2013**

Item	Description	Aug 1 2012		June 30 2013	Totals
		Labor	Consultants	Other	
A.	Management and Delivery Team				
	General Manager	455,742	-	-	455,742
	SPV Media / Community Relations	363,000	-	-	363,000
	Contractual & Technical Support	404,250	-	-	404,250
	Design manager	213,827	-	-	213,827
	Construction & Technical Support Nth	326,750	-	-	326,750
	Construction & Technical Support Sth	326,750	-	-	326,750
	Office Lead/Project Administrator	137,917	-	-	137,917
	Executive Involvement	550,000	-	-	550,000
	Admin Support/Document Control	244,750	-	-	244,750
	Finance Team Support	595,833	-	-	595,833
	Legal & Insurance Team Support	687,500	-	-	687,500
	Public Information Team Support	45,833	-	-	45,833
	Other Internal Support	45,833	-	-	45,833
	Quality Assurance and SME review Requirements	-	736,799	-	736,799
	Subtotal A. Management and Delivery Team	4,397,985	736,799	-	5,134,784
B.	Indirect Costs				
	Postage, Reproduction, Consumables	-	-	119,167	119,167
	Partnering and other Events	-	-	68,750	68,750
	Other Statutory/Compliance costs	-	-	137,500	137,500
	Financial Services and TIFIA/Lenders Compliance Costs	-	-	137,500	137,500
	External Specialists, Scheduling, Insurance	-	132,917	-	132,917
	Independent Engineer (Verifier & Certifier)	-	696,667	-	696,667
	Other Expenses	-	-	229,167	229,167
	Subtotal B. Indirect Costs	-	829,584	692,084	1,521,668
C.	Roadside Operations during Construction				
	HOT OC Support and Turnover at SPV level	-	504,167	-	504,167
	Routine Maintenance and Incident Response Coordination	-	-	-	-
	Routine Maintenance/Incident Response/Snow & Ice coordination	-	-	-	-
	Subtotal C. Roadside Operations	-	504,167	-	504,167
D.	Virginia State Troopers Costs				
	Establishment of Vehicles and Equipment	-	-	-	-
	Training and Recruitment	-	-	-	-
	Subtotal D. Virginia State Troopers Costs	-	-	-	-
E.	Other				
	Customer Service Requirements pre TD1	-	-	-	-
	Incremental Costs for Transponders	-	-	-	-
	VOD - Procure, Install, Test, Integrate, Commission	-	-	-	-
	Dynamic and Static Signage Messaging Review	-	-	229,167	229,167
	Pre Operations review and oversight, Coord Shared Facilities	-	-	404,250	404,250
	Customer Education, Community Liaison and Marketing	-	-	923,667	923,667
	Allowance for Unforeseen Costs	-	-	887,281	887,281
	Subtotal E. Other	-	-	2,444,365	2,444,365
	Sub Total SPV Budget (excluding early works)	4,397,985	2,070,550	3,136,449	9,604,984
F.	Early Works				325,727
	Total SPV Budget				9,930,711

EXHIBIT C – SCOPE OF SERVICES

Part I (Section 9.01(a)) – Services rendered by the Operating Company during the Construction Period under Section 3.04 that are performed by the Operating Company on behalf of the Concessionaire which may include but are not limited to are:

- a) Provision of personnel and resources for the Concessionaire management team including:
 - i) General Management
 - ii) Managing, coordinating, and supervising the Work carried out by the Design-Build Contractor under the Design-Build Contract
 - iii) Media/Community Relations
 - iv) Contractual & Technical Support
 - v) Administrative Support
 - vi) Support for Board of Managers

- b) Provision of direct and indirect Costs associated with running the Concessionaire business including but not limited to:
 - i) Board Costs
 - ii) Building and Consumables (rent, taxes, utilities, security, and janitorial)
 - iii) General Indirect Costs (office supplies, equipment rental, training, seminars)
 - iv) Financial Services (audits, financial statement preparation, review of payment support data)
 - v) Insurance Premium (Workers Compensation)
 - vi) Independent Verifier & Certifier oversight
 - vii) Management of or provision of other Support Services including internal or external resources as deemed necessary

- c) Virginia State Trooper establishment including:
 - i) vehicles & equipment

- d) Provision of management, oversight, (and personnel, if necessary) for:
 - i) Vehicle Occupancy Detection infrastructure and integration
 - ii) Dynamic Pricing Messaging Strategy report and recommendations
 - iii) Spares Inventory Procurement
 - iv) Marketing, Communications, Community Education and Awareness requirements

Part II (Section 9.01(b)) - Services rendered by the Operating Company prior to and during the Operating Period under Sections 3.05 and 3.06 that are performed by the Operating Company which may include but are not limited to are:

- a) Provision of personnel and resources as necessary to complete the obligations under Section 3.05:

- b) Provision of personnel and resources and equipment as required to complete the obligations under Section 3.06 to manage and operate the HOT Lanes, the ETTM System and associated infrastructure which may include but not be limited to:

- i) Management and Operations Personnel
 - ii) Subcontractors and Consultants
 - iii) Routine Maintenance, Incident Response and management services,
 - iv) Tolling Services management,
 - v) Enforcement management,
 - vi) Coordination of the requirements under the ETC Agreement,
 - vii) HOT OC, Consumables (taxes, utilities, security, and janitorial) and Shared Services under the Shared Facilities Agreement
 - viii) Indirect Costs (office supplies, equipment rental, training, seminars)
 - ix) Coordination with the Department in accordance with the Agreement
- c) Provide the following resources and services on behalf of the Concessionaire under the Section 9.01(b)(iii) for the annual fee are:
- i) Governance arrangements
 - ii) Company reporting
 - iii) Corporate budgeting
 - iv) Management advice
 - v) Insurance advice
 - vi) Legal and compliance support (excluding legal costs on specific matters)
 - vii) Tax advice (excluding costs of taxation advice on specific matters)
 - viii) Financial advice (but excluding financing costs)
 - ix) Expertise advice on industry trends, intelligent roads and best practice in toll roads
 - x) Corporate relations advice
 - xi) Corporate social responsibility advice
 - xii) Services as necessary under Section 8.02

Part III (Section 9.01(c)) - Services rendered by the Operating Company during the Term under Section 3.07 that are performed by the Operating Company are:

- a) Provide specialist or other support including, personnel and/or other resources to complete the additional services under Section 3.07 that will be detailed to the Concessionaire for their review and approval.

EXHIBIT D – LABOR, EMPLOYMENT AND DBE/SWAM RELATED MATTERS

[Same as Exhibit AA to the Comprehensive Agreement.]

EXHIBIT AA

LABOR, EMPLOYMENT AND DBE/SWAM RELATED MATTERS

In the event of any discrepancy between the provisions of this Exhibit AA that are intended to incorporate or summarize statutes, rules or regulations promulgated by a Governmental Authority and the actual statutes, rules or regulations in effect from time to time, the actual statutes, rules or regulations shall apply and supersede the inconsistent provisions set forth herein. Further, such statutes, rules and regulations shall apply to the Project at any time only to the extent such statutes, rules and regulations are required to apply to the Project by applicable Law or regulation. In addition, in the event the Agreement and this Exhibit AA apply different standards, procedures or requirements for the same matters, the standards, procedures and requirements specified in the Agreement shall control.

1. Labor and Wages

The Concessionaire shall comply with the provisions and requirements of the workers' compensation law and public statutes that regulate hours of employment on public work.

- (a) **Predetermined Minimum Wages:** The provisions of laws requiring the payment of a minimum wage of a predetermined minimum wage scale for the various classes of laborers and mechanics, when such a scale is incorporated in the Agreement, shall be expressly made a part of any Project Agreement. The Concessionaire and its agents shall promptly comply with all such applicable provisions.

Any classification not listed and subsequently required shall be classified or reclassified in accordance with the wage determination. If other classifications are used, omission of classifications shall not be cause for additional compensation. The Concessionaire shall be responsible for determining local practices with regard to the application of the various labor classifications.

- (b) **Labor Rate Forms:** The Concessionaire shall complete Form C-28, indicating by classification the total number of employees, excluding executive and administrative employees, employed on the project. The Concessionaire shall also indicate on the form the compensation rate per hour for each classification. The Concessionaire shall submit an original and two copies of the form prior to the due date of the second estimate for payment and for each 90-day period thereafter until the work specified in the Agreement has been completed. If at the time of Final Acceptance the period since the last labor report is 30 days or more, the Concessionaire shall furnish an additional labor report as outlined herein prior to payment of the final estimate.

2. **Equal Employment Opportunity**

(a) The Concessionaire shall comply with the applicable provisions of presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity ("EEO"). The Concessionaire shall maintain the following records and reports as required by the EEO provisions:

- record of all applicants for employment
- new hires by race, work classification, hourly rate, and date employed
- minority and non-minority employees employed in each work classification
- changes in work classifications
- employees enrolled in approved training programs and the status of each
- minority subcontractor or subcontractors with meaningful minority group representation
- copies of Form C-57 (Contractor's Monthly EEO Report) submitted by subcontractors

The Concessionaire shall cooperate with the Department in carrying out EEO obligations and in the Department's review of activities under the Agreement. The Concessionaire shall comply with the specific EEO requirements specified in this Exhibit and shall include these requirements in every subcontract of \$10,000 or more with such modification of language as may be necessary to make them binding on the subcontractors.

(b) EEO Policy: The Concessionaire shall accept as operating policy the following statement:

It is the policy of this Company to assure that applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include 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 or on-the-job training.

(c) EEO Officer: The Concessionaire shall designate and make known to the Department an EEO Officer who can effectively administer and promote an active Concessionaire EEO program and who shall be assigned adequate authority and responsibility to do so.

(d) Dissemination of Policy:

1. Members of the Concessionaire's staff who are authorized to hire, supervise, promote, and discharge employees or recommend such action

or are substantially involved in such action shall be made fully aware of and shall implement the Concessionaire's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and at least once every 6 months thereafter, at which time the Concessionaire's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.
- b. New supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Concessionaire's EEO obligations within 30 days following their reporting for duty with the Concessionaire.
- c. The EEO Officer or appropriate company official shall instruct employees engaged in the direct recruitment of employees for the project relative to the methods followed by the Concessionaire in locating and hiring minority group employees.

2. In order to make the Concessionaire's EEO policy known to all employees, prospective employees, and potential sources of employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Concessionaire shall take the following actions:

- a. Notices and posters setting forth the Concessionaire's EEO policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.

The Concessionaire shall furnish, erect, and maintain at least two bulletin boards having dimensions of at least 48 inches in width and 36 inches in height at locations readily accessible to all personnel concerned with the project. The boards shall be erected immediately upon initiation of the Agreement work and shall be maintained until the completion of such work, at which time they shall be removed from the project. Each bulletin board shall be equipped with a removable glass or plastic cover that when in place shall protect posters from weather or damage. The Concessionaire shall promptly post official notices on the bulletin boards.

- b. The Concessionaire’s EEO policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- (e) Recruitment:
- 1. When advertising for employees, the Concessionaire shall include in all advertisements for employees the notation “An Equal Opportunity Employer” and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
 - 2. Unless precluded by a valid bargaining agreement, the Concessionaire shall conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, state employment agencies, schools, colleges, and minority group organizations. The Concessionaire shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to it for employment consideration.
 - 3. The Concessionaire shall encourage its employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.
- (f) Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.
- 1. The Concessionaire shall conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of personnel.
 - 2. The Concessionaire shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.
 - 3. The Concessionaire shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Concessionaire shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected persons.

4. The Concessionaire shall investigate all complaints of alleged discrimination made to it in connection with obligations under the Agreement, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, corrective action shall include those persons. Upon completion of each investigation, the Concessionaire shall inform every complainant of all avenues of appeal.

(g) Training:

1. The Concessionaire shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.
2. Consistent with work force requirements and as permissible under Federal and state regulations, the Concessionaire shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of Agreement performance. Where feasible, 25 percent of apprentices or trainees in each occupation should be in their first year of apprenticeship or training.
3. The Concessionaire shall advise employees and applicants for employment of available training programs and the entrance requirements for each.
4. The Concessionaire shall periodically review the training and promotion potential of minority group employees and shall encourage eligible employees to apply for such training and promotion.
5. If the Agreement provides a pay item for trainees, training shall be in accordance with the requirements of Section 518 of the *2007 Road and Bridge Specification*.

(h) Unions: If the Concessionaire relies in whole or in part on unions as a source of employees, best efforts shall be made to obtain the cooperation of such unions to increase opportunities for minority groups and women in the unions and to effect referrals by such unions of minority and women employees. Actions by the Concessionaire, either directly or through its agents or subcontractors, shall include the following procedures:

1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.

2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions shall be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.
 3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Concessionaire, the Concessionaire shall so certify to the Department and shall set forth what efforts he made to obtain the information.
 4. If a union is unable to provide the Concessionaire with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Concessionaire shall, through its recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group persons and women. If union referral practice prevents the Concessionaire from complying with the EEO requirements, the Concessionaire shall immediately notify the Department.
- (i) Subcontracting: The Concessionaire shall use best efforts to use minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. The Concessionaire shall use best efforts to ensure subcontractor compliance with its EEO obligations.
1. Records and Reports: The Concessionaire shall keep such records as are necessary to determine compliance with its EEO obligations. The records shall be designed to indicate the following:
 - i. the number of minority and nonminority group members and females employed in each work classification on the project
 - ii. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and females if unions are used as a source of the work force
 - iii. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees
 - iv. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees
 2. Records shall be retained for a period of three years following completion of the Work and shall be available at reasonable times and places for inspection by authorized Representatives of the Department.

3. Form C-57 shall be submitted each month for the first three months after each Contractor commences the Work pursuant to a notice to proceed issued by the Department pursuant to Section 8.03(b) or Section 9.02 (as applicable) of the Agreement and every month of July thereafter for the duration of the Project. Form C-57 shall be completed to indicate the number of minority, nonminority, and female employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within three weeks after the reporting period. Failure to do so may result in delay of approval of the Concessionaire's monthly progress estimate for payment.

3. Use of Small, Women and Minority-Owned Businesses (SWaMs)

The Concessionaire shall comply with all the requirements of the Department's "Special Provision 1 for Section 107.15 – Use of Small, Women and Minority Owned-Businesses (SWaMs)" dated September 19, 2011 (attached hereto as Attachment 1). Attachment 1 and "Special Provision 2 for Section 107.15 – Use of Disadvantaged Business Enterprises (DBEs)", (described in more detail below) amend and supersede Section 107.15 of the *2007 Road and Bridge Specification* in its entirety and shall be read in conjunction with Section 24.03 of the Agreement.

4. Civil Rights

- (a) DBE-SWaM Forms: The Concessionaire shall complete the following forms or equivalent forms as part of its compliance with the DBE-SWaM goals set forth in the Agreement.
 - Form C-111 (Minimum DBE Requirements)
 - Form C-112 (Certification Of Binding Agreement)
 - Form C-48 (Subcontractor/Supplier Solicitation And Utilization Form)
 - Form C-49 (DBE Good Faith Efforts Documentation)
- (b) On-the-Job Training Forms: The Concessionaire shall comply with the Special Provision Copied Note for Section 518 of the *2007 Road and Bridge Specifications*.
- (c) Design Requirements and Submittals: Payments made to DBE and SWaM consultants must be submitted on form C-63 (DBE Activity Report) or an equivalent form on a quarterly basis. Form C-63 and submittal information for the form is set forth in the Department's Construction Directive Memorandum CD-2007-6.

- (d) Construction Requirements and Submittals:
1. EEO Contract Compliance:
 - i. The following forms and associated submittal information are required from the Design-Build Contractor and its subcontractors (including haulers and suppliers as applicable).
 - Form C-64 (Company Employment)
 - Letter Designating EEO Officer
 - Semi-annual Minutes of an EEO Meeting
 - Form C-57 (Contractor’s Monthly EEO Report)
 - ii. The Design-Build Contractor and its subcontractors are subject to formal Department EEO Contractor Compliance Reviews at least annually.
 2. Labor Compliance: The Concessionaire shall submit, or cause the submission, of the following. In addition, the Concessionaire’s employees (and the employees of its subcontractors) may be subject to interviews by the Department.
 - i. weekly payrolls from the Design-Build Contractor and its subcontractors and haulers;
 - ii. Form C-28 (Basic Hourly Rates paid by Contractor); and
 - iii. Form C-56 (Statement of Compliance).
 3. DBE Compliance:
 - i. DBE subcontractors, suppliers, manufacturers and haulers must be listed and submitted on Form C-111 or an equivalent form, indicating the task(s) assigned and the approximate dollar value of the planned work pursuant to “Special Provision 2 for Section 107.15 – Use of Disadvantaged Business Enterprises (DBEs)” dated April 26, 2011 (attached hereto as Attachment 2). Attachments 1 and 2 amend and supersede Section 107.15 of the *2007 Road and Bridge Specification* in its entirety and shall be read in conjunction with Section 24.03 of the Agreement.
 - ii. Payments made to DBE firms must be submitted on form C-63 on a quarterly basis. Form C-63 and submittal information for the form is provided in the Department’s Construction Directive Memorandum CD-2007-6 included in Attachment 5.

- iii. All DBE firms are subject to formal DBE contract compliance reviews at least once during active participation on the project.
 - iv. Attachment 2 provides guidance on removal of a DBE firm from the contract or for substituting another firm for all or portions of items of work designated to be performed by a DBE firm. Advance approval must be obtained from the district Civil Rights Office.
4. SWaM Compliance:
- i. SWaM subcontractors, suppliers, manufacturers and haulers shall be listed and submitted on Form C-111 or an equivalent form, indicating the task(s) assigned and the approximate dollar value of the planned work pursuant to Attachment 1.
 - ii. Payments made to SWaM firms must be submitted on form C-63 on a quarterly basis in order to receive credit. See Construction Memorandum CD-2007-6.
5. On-the-Job Training Compliance (applicable only during the performance of the Design-Build Work):
- i. The Project has been assigned a goal of 24 trainees, as indicated in the Special Provision for Section 518 of the 2007 Road and Bridge Specifications.
 - ii. Upon notification of intent to assign employees into an approved program, the Department's Civil Rights office shall provide Form C-65, which initiates the training process. The Concessionaire is responsible for submitting the completed form for approval by the District Civil Rights Manager ("DCRM"). Trainees may not have received prior training in the classification planned for the training opportunity. A journeyman in that classification must be on site and be available to assist with the training. The DCRM must be in agreement with the selected candidate.
 - iii. Trainees may be current employees, newly hired employees, or individuals from the Business Opportunity and Workforce Development ("BOWD") Program. The BOWD Program is a Department developmental supportive services program and partnering initiative funded by FHWA for selected DBE firms of various skill and competence levels interested in entering, enhancing, or expanding highway contracting opportunities with prime contractors/consultants. The BOWD Program also supports On-the-Job Training supportive services to increase the participation of minority, disadvantaged persons, and women through a pre-employment training program into journey-level

positions to ensure that a competent workforce is available to meet highway construction hiring needs and to address the historical under-representation of these groups in highway construction skilled and semi-skilled crafts. The partnering initiative between prime contractors/consultants, subcontractors and perspective trainees provides the opportunity for the further development of DBE firms through performance on contracts and guidance from prime contractors/consultants. The intent of this partnering initiative is to increase capacity by perfecting existing skills and knowledge, expanding into new work areas, and prime contractor/consultant joint venturing with DBE firms. The Concessionaire is encouraged to achieve all or a percentage of the required DBE participation/goals determined for this project by the utilization of approved BOWD firms. To assist the Concessionaire in taking advantage of this opportunity for utilization of approved BOWD firms, please contact the BOWD Center for additional information, details, resources, and support. For further information on the BOWD Center and to view the DBE profiles, please go to www.virginia.org/business/BOWD.asp. The BOWD Center can be contacted at (804) 662-9555 or via email to BOWDCenter@vdotvirginia.gov.

- iv. Form C-67, weekly training hours report, is required and must have concurrence from the DCRM as to the number of hours of training received for that week.

EXHIBIT AA

ATTACHMENT 1

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION 1 FOR
SECTION 107.15

September 19, 2011

Section 107.15—Use Small, Women-Owned and Minority-Owned Businesses (SWaMs)

It is the policy of the Department that Small, Women-Owned, and Minority-Owned Businesses (SWaMs) shall have the maximum opportunity to participate in the performance of the Contract. The Contractor is encouraged to take necessary and reasonable steps to ensure that SWaMs have the maximum opportunity to compete for and perform work on the Contract, including participation in any subsequent subcontracts.

A SWaM firm shall mean a small business concern (as defined pursuant to the Code of Virginia, Title 2.2 -1401 for the purpose of reporting small, women-owned, and minority-owned business participation in state contracts and purchases pursuant to §§ 2.2-1404 and 2.2-1405. To that end the following terms shall apply:

Small business means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less

Women-owned business means a business concern that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

Minority individual means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

1. African American means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
2. Asian American means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
3. Hispanic American means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
4. Native American means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
5. a member of another group, or other individual, found to be economically and socially disadvantaged by the Small Business Administration under 8(a) of the Small Business Act as amended (15 U.S.C. 637[a]).

State agency means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

A list of Virginia Department of Minority Business Enterprise (DMBE) certified SWaM firms is maintained on the DMBE web site (<http://www.dmb.e.state.va.us/>) under the **SWaM Vendor Directory** link.

SWaM certification entitles firms to participate in VDOT's SWaM program; however, this certification does not guarantee that the firm will obtain work nor does it attest to the firm's abilities to perform any particular work.

The Contractor is encouraged to use the services of banks owned or controlled by minorities or females; however, use of such services will not be credited toward participation achievement for the Contract. The Department has on file, and will make available on request, the names and addresses of known minority and female owned banks in the Commonwealth of Virginia.

The Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of actively and effectively administering, encouraging and promoting a responsive program for the use of SWaMs.

The performance of the Contract for the purpose of this specification shall be interpreted to include, but not necessarily be limited to, subcontracting; furnishing materials, supplies, and services; and, leasing equipment or where applicable, any combination thereof.

If the Contractor intends to sublet a portion of the work on the project in accordance with the provisions of Section 105.06 of the Specifications, the Contractor is encouraged to seek out and consider SWaMs as potential subcontractors. The Contractor is encouraged to contact SWaMs

to solicit their interest, capability, and prices and shall retain on file the proper documentation to substantiate such contacts.

By signing the bid, the bidder certifies to the following:

- That on the work proposed to be sublet and shown on Form C-31 for *Contractors Proposal to Sublet*, the bidder has taken reasonable steps to seek out and consider SWaMs as potential subcontractors.
- That, if awarded the project, any work proposed to be sublet and not shown on the form for *Contractors Proposal to Sublet*, the same reasonable steps certified herein will be taken.

If the Department has determined that specific opportunities for participation by SWaMs are available on a particular Contract and the bidder chooses to claim credit for SWaM participation, the extent of such participation will be shown as a percentage of the Contract amount and will be indicated on Form C-111, *SWaM Participation*.

If the bidder is a SWaM that is owned and controlled by a minority female(s), participation achievement may be shown as either minority or female, but not both, as the certification indicates. Further, each bidder shall comply with the requirements of Section 102.01.

If the apparent low bidder is a currently certified SWaM firm, the SWaM requirements of this provision will not be applicable except for those referring to the reporting of participation achievement.

The following are examples of efforts the Department encourages bidders and Contractors to make in soliciting SWaM participation. Other factors or types of efforts may be relevant in appropriate cases. The Contractor is encouraged to:

- (a) attend any pre-solicitation or pre-bid meetings at which SWaMs could be present and/or informed of contracting and subcontracting opportunities;
- (b) advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities;
- (c) provide written notice to a reasonable number of specific SWaMs that their interest in the Contract is being solicited in sufficient time to allow the SWaMs to participate effectively;
- (d) follow-up initial solicitations of interest by contacting SWaMs to determine with certainty whether the SWaMs are interested;
- (e) select portions of the work to be performed by SWaMs in order to increase the likelihood of obtaining SWaM participation (including, where appropriate, breaking

- down proposed contract work into economically feasible units to facilitate SWaM participation);
- (f) provide interested SWaMs with adequate information about the plans, Specifications, and requirements of the Contract
 - (g) negotiate in good faith with interested SWaMs, not rejecting SWaMs as unqualified without sound reasons based on a thorough investigation of their capabilities;
 - (h) make efforts to assist interested SWaMs in obtaining bonding, lines of credit, or insurance required by the Department or Contractor;
 - (i) make efforts to assist interested SWaMs in obtaining necessary equipment, supplies, materials, or other necessary or related assistance or services; and,
 - (j) effectively use the services of available minority, woman and small business community organizations; minority, woman and small business contractors' groups; local, state and federal minority, woman and small business assistance offices; and other organizations that provide assistance in the recruitment and placement of SWaMs.

Any agreement between a bidder and a SWaM whereby the SWaM agrees not to provide quotations for performance of work to other bidders is prohibited.

The Contractor shall submit to the Department a fully executed Form C-111 showing the name(s) and certification number(s) of any currently certified SWaMs who will perform work eligible to be reported as said participation credit.

The Contractor shall furnish, and require each subcontractor to furnish, on a quarterly basis, information relative to all SWaM involvement on the project. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report or by copies of canceled checks with appropriate identifying notations. If participation achievement is to be fulfilled with a SWaM whose name has not been previously furnished to the Department for the Contract in question, an initial or revised Form C-111, whichever is appropriate, shall be submitted prior to such SWaM beginning the work. Failure to provide the Department the forms by the fifth of the month following each quarterly reporting period may result in delay of the Contractor's estimate for payment.

If a SWaM, through no fault of the Contractor, is unable or unwilling to fulfill his agreement with the Contractor, the Contractor shall immediately notify the Department and provide all relevant facts. If any subcontractor is relieved of the responsibility to perform work under their subcontract, the Contractor is encouraged to take the appropriate steps to obtain a SWaM to perform an equal or greater dollar value of the remaining subcontracted work. The substitute SWaM's name, description of the work, and dollar value of the work shall be submitted to the Department on Form C-111 prior to such SWaM beginning the work, if such work is to be counted for participation achievement.

ATTACHMENT 2

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION 2 FOR
SECTION 107.15

April 26, 2011

Section 107.15—Use of Disadvantaged Business Enterprises (DBEs)

A. Disadvantaged Business Enterprise (DBE) Program Requirements

Any Contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations; and the Virginia Department of Transportation's (VDOT or the Department) Road and Bridge Specifications and DBE Program rules and regulations.

For the purposes of this provision, Contractor is defined as the Prime Contractor of the contract; and sub-contractor is defined as any DBE supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the contract. The Contractor shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements, the Contractor, for itself and for its subcontractors and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal and state DBE Program regulations. By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations and to bind the Contractor's subcontractors contractually to the same at the Contractor's expense.

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with

guidelines stated herein and current at the time of the proceedings. Where applicable, the Department will notify the Contractor of any changes to the appeal requirements, processes, and procedures after receiving notification of the Contractor's desire to appeal.

All time frames referenced in this provision are expressed in business days unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.

B. DBE Certification

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Minority Business Enterprise (DMBE) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of Minority Business Enterprise and the Metropolitan Washington Airports Authority Internet websites: <http://www.dmbv.virginia.gov/> ; <http://mwaa.com/362.htm>

C. Bank Services

The Contractor and each subcontractor are encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services and the fees charged for services typically will not be eligible for DBE Program contract goal credit.

D. DBE Program-Related Certifications Made by Bidders\Contractors

By submitting a bid and by entering into any contract on the basis of that bid, the bidder/Contractor certifies to each of the following DBE Program-related conditions and assurances:

1. That the management and bidding officers of its firm agree to comply with the bidding and project construction and administration obligations of the USDOT DBE Program requirements and regulations of 49 CFR Part 26 as amended, and VDOT's Road and Bridge Specifications and DBE Program requirements and regulations.
2. Under penalty of perjury and other applicable penal law that it has complied with the DBE Program requirements in submitting the bid, and shall comply fully with these requirements in the bidding, award, and execution of the contract.

3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The bidder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The bidder further certifies that the bidder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a bidder and a DBE whereby the DBE promises not to provide quotations for performance of work to other bidders is prohibited.
4. As a bidder, good faith efforts were made to obtain DBE participation in the proposed contract at or above the goal for DBE participation established by VDOT. It has submitted as a part of its bid true, accurate, complete, and detailed documentation of the good faith efforts it performed to meet the contract goal for DBE participation. The bidder, by signing and submitting its bid, certifies the DBE participation information submitted within the stated time thereafter is true, correct, and complete, and that the information provided includes the names of all DBE firms that will participate in the contract, the specific line item(s) that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE. The specific line item must reference the VDOT line number and item number contained in the proposal.
5. The bidder further certifies, by signing its bid, it has committed to use each DBE firm listed for the specific work item shown to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the bid, the bidder certifies on work that it proposes to sublet; it has made good faith efforts to seek out and consider DBEs as potential subcontractors. The bidder shall contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents.
6. Once awarded the contract, the Contractor shall make good faith efforts to utilize DBE firms to perform work designated to be performed by DBEs at or above the amount or percentage of the dollar value specified in the bidding documents. Further, the Contractor understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Contractor's own forces or those of an affiliate of the Contractor without the prior written consent of VDOT as set out within the requirements of this provision.
7. Once awarded the contract, the Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part

26 for DBEs. The designation and identity of this officer need be submitted only once by the Contractor during any twelve (12) month period at the preconstruction conference for the first contract the Contractor has been awarded during that reporting period. The Department will post such information for informational and administrative purposes at VDOT's Internet Civil Rights Division website.

8. Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. Where a contract exists and where the Contractor, DBE firm, or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract regulations and/or requirements have not been met, and may assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.
9. In the event a bond surety assumes the completion of work, if for any reason VDOT has terminated the prime Contractor, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original prime Contractor in accordance with the requirements of this specification.

E. Disqualification of Bidder

Bidders may be disqualified from bidding for failure to comply with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge Specifications.

F. Bidding Procedures

The following bidding procedures shall apply to the contract for DBE Program compliance purposes:

1. **Prequalification of Subcontractors:** All prospective DBE subcontractors shall prequalify with the Department prior to bidding and shall have received a certification of qualification to perform VDOT work prior to the bidder/Contractor submitting their bid. Suppliers, haulers and consultants are not required to be prequalified.
2. **Contract Goal, Good Faith Efforts Specified:** All bidders evidencing the attainment of DBE goal commitment equal to or greater than the required DBE goal established for the project must submit completed Form C-111, Minimum DBE Requirements, and Form C-48, Subcontractor/Supplier Solicitation and Utilization.

Forms C-48, C-49, C-111, and C-112 can be obtained from the VDOT website at:
<http://vdotforms.vdot.virginia.gov/>

Instructions for submitting Form C-111 can be obtained from the VDOT website at:
http://www.vdot.virginia.gov/business/resources/const/Exp_DBE_Commitments.pdf

3. **Bid Rejection:** The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid.

If the lowest bidder is rejected for failure to submit the required documentation in the specified time frames, the Department may award the work to the next lowest bidder, or re-advertise the proposed work at a later date or proceed otherwise as determined by the Commonwealth.

4. **Good Faith Efforts Described:** In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE participation sufficient to meet the DBE Program and contract goal requirements.

Good faith efforts may be determined through use of the following list of the types of actions the bidder may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

- (a) Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to DBEs who have the capability to perform the work of the contract. Examples include: advertising in at least one daily/weekly/monthly newspaper of general circulation, as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. The bidder shall solicit this interest no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation. The bidder shall determine with certainty if the DBEs are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts as requested on Form C-49, DBE Good Faith Efforts Documentation.

- (b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to completely perform all portions of this work in its entirety or use its own forces;
- (c) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation;
- (d) Negotiating for participation in good faith with interested DBEs;
 - 1. Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs that were considered; dates DBEs were contacted; a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work;
 - 2. A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and should take a firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not sufficient reason for a bidder's failure to meet the contract goal for DBE participation, as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make diligent good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference can be shown by the bidder to be excessive, unreasonable, or greater than would normally be expected by industry standards;
- (e) A bidder cannot reject a DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities. The DBE's standing within its industry, membership in specific groups, organizations, associations, and political or social affiliations, and union vs. non-union employee status are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal for DBE participation;
- (f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by VDOT or by the bidder/Contractor;

- (g) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in these provisions;
- (h) Effectively using the services of appropriate personnel from VDOT and from DMBE; available minority/women community or minority organizations; contractors' groups; local, state, and Federal minority/ women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

G. Documentation and Administrative Reconsideration of Good Faith Efforts

During Bidding: As described in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision, the bidder must provide Form C-49, DBE Good Faith Efforts Documentation, of its efforts made to meet the DBE contract goal as proposed by VDOT within the time frame specified in this provision. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firms participation in the proposed contract work.

During the Contract: If a DBE, through no fault of the Contractor, is unable or unwilling to fulfill his agreement with the Contractor, the Contractor shall immediately notify the Department and provide all relevant facts. If a Contractor relieves a DBE subcontractor of the responsibility to perform work under their subcontract, the Contractor is encouraged to take the appropriate steps to obtain a DBE to perform an equal dollar value of the remaining subcontracted work. In such instances, the Contractor is expected to seek DBE participation towards meeting the goal during the performance of the contract.

If the Contractor fails to conform to the schedule of DBE participation as shown on the progress schedule, or at any point at which it is clearly evident that the remaining dollar value of allowable credit for performing work is insufficient to obtain the scheduled participation, and the Contractor has not taken the preceding actions, the Contractor and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as conformance with the schedule of DBE participation is achieved.

Project Completion: If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor

may submit documentation to the State Construction Engineer to substantiate that failure was due solely to quantitative underrun(s), elimination of items subcontracted to DBEs, or to circumstances beyond their control, and that all feasible means have been used to obtain the required participation. The State Construction Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to enjoin the Contractor from bidding on other VDOT work as described herein, the enjoinderment period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

H. DBE Participation for Contract Goal Credit

DBE participation on the contract will count toward meeting the DBE contract goal in accordance with the following criteria:

1. Cost-plus subcontracts will not be considered to be in accordance with normal industry practice and will not normally be allowed for credit.
2. The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE will be counted toward meeting the contract goal for DBE participation in accordance with the **DBE Program-Related Certifications Made by Bidders\Contractors** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself or subcontracted by the DBE to other DBE firms.
3. When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Contractor may count toward the DBE goal only that portion of the total dollar value of the contract equal to the distinctly defined portion of the contract work that the DBE has performed with the DBE's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Contractor seeks to claim the DBE's credit toward the DBE contract goal.
4. When a DBE subcontracts part of the work of the contract to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE's subcontractor at a lower tier is a certified DBE. Work that a DBE subcontracts to either a non-DBE firm or to a non-certified DBE firm will

not count toward the DBE contract goal. The cost of supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or the prime's affiliated firms will not count toward the contract goal for DBE participation.

5. The Contractor may count expenditures to a DBE subcontractor toward the DBE contract goal only if the DBE performs a Commercially Useful Function (CUF) on that contract.
6. A Contractor may not count the participation of a DBE subcontractor toward the Contractor's final compliance with the DBE contract goal obligations until the amount being counted has actually been paid to the DBE. A Contractor may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a certified DBE manufacturer.
 - (a) For the purposes of this Special Provision, a regular dealer is defined as a firm **or person** that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the DBE firm\person shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products or equipment in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.
 - (b) A DBE firm or person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the DBE both owns and operates distribution equipment for the products it sells and provides for the contract work, provided further that the DBE firm or person has been certified with an appropriate NAICS code for supply of such bulk items. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis to be eligible for credit to meet the DBE contract goal.
 - (c) If a DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the DBE regular dealer, who shall be responsible for their distribution.
 - (d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the

premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.

(g) A Contractor may count toward the DBE contract goal the following expenditures to DBE firms that are not regular dealers or manufacturers for DBE program purposes:

1. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.
2. The entire amount of that portion of the construction contract that is performed by the DBE's own forces and equipment under the DBE's supervision. This includes the cost of supplies and materials ordered and paid for by the DBE for contract work, including supplies purchased or equipment leased by the DBE, except supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or its affiliates.

(h) A Contractor may count toward the DBE contract goal one hundred (100) percent of the fees paid to a DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by VDOT to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. A Contractor shall not count costs for the removal or relocation of excess material from or on the job site when the DBE trucking company is the manufacturer of or a regular dealer in those materials and supplies. The DBE trucking firm shall also perform a Commercially Useful Function (CUF) on the project and not operate merely as a pass through for the purposes of gaining credit toward the DBE contract goal. Prior to submitting a bid, the Contractor shall determine, or contact the VDOT Civil Rights Division or its district Offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project. See section on **Miscellaneous DBE Program Requirements; Factors used to Determine if a DBE Trucking Firm is Performing a CUF.**

(i) The Contractor will receive DBE contract goal credit for the fees or commissions charged by and paid to a DBE broker who arranges or expedites sales, leases, or other project work or service arrangements provided that

those fees are determined by VDOT to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that regularly engages in arranging for delivery of material, supplies, and equipment, or regularly arranges for the providing of project services as a course of routine business but does not own or operate the delivery equipment necessary to transport materials, supplies, or equipment to or from a job site.

I. Performing a Commercially Useful Function (CUF)

No credit toward the DBE contract goal will be allowed for contract payments or expenditures to a DBE firm if that DBE firm does not perform a CUF on that contract. A DBE performs a CUF when the DBE is solely responsible for execution of a distinct element of the contract work and the DBE actually performs, manages, and supervises the work involved with the firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF the DBE alone shall be responsible and bear the risk for the material and supplies used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the DBE's own forces and equipment, and paying for those materials and supplies. The amount the DBE firm is to be paid under the contract shall be commensurate with the work the DBE actually performs and the DBE credit claimed for the DBE's performance.

Monitoring CUF Performance: It shall be the Contractor's responsibility to ensure that all DBE firms selected for subcontract work on the contract, for which he seeks to claim credit toward the contract goal, perform a CUF. Further, the Contractor is responsible for and shall ensure that each DBE firm fully performs the DBE's designated tasks with the DBE's own forces and equipment under the DBE's own direct supervision and management or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this provision the DBE's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased by the DBE, and over which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the prime Contractor or an affiliate of the Contractor under this contract.

VDOT will monitor the Contractor's DBE involvement during the performance of the contract. However, VDOT is under no obligation to warn the Contractor that a DBE's participation will not count toward the goal.

DBEs Must Perform a Useful and Necessary Role in Contract Completion: A DBE does not perform a commercially useful function if the DBE's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

DBEs Must Perform The Contract Work With Their Own Workforces: If a DBE does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE's contract with the DBE's own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involve, VDOT will presume that the DBE is not performing a CUF and such participation will not be counted toward the contract goal.

VDOT Makes Final Determination On Whether a CUF Is Performed: VDOT has the final authority to determine whether a DBE firm has performed a CUF on a federal-aid contract. To determine whether a DBE is performing or has performed a CUF, VDOT will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Contractor or by employees or equipment of the Contractor shall be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated.

J. Verification of DBE Participation and Imposed Damages

Within fourteen days after contract execution, the Contractor shall submit to the Responsible Engineer, with a copy to the District Civil Rights Office (DCRO), a fully executed subcontract agreement for each DBE used to claim credit in accordance with the requirements stated on Form C-112. The subcontract agreement shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subcontractor. Because of the commercial damage that the Contractor and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff will treat subcontract agreements as proprietary Contractor trade secrets with regard to Freedom of Information Act requests. In lieu of subcontract agreements, purchase orders may be submitted for haulers, suppliers, and manufacturers. These too, will be treated confidentially and protected. Such purchase orders must contain, as a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

The Contractor shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each quarter during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report. The department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations. Failure to provide Form C-63 to the District Civil Rights Office (DCRO) within five (5) business days after the reporting period may result in delay of approval of the Contractor's monthly progress estimate for payment. The names and certification numbers of DBE firms provided

by the Contractor on the various forms indicated in this Special Provision shall be exactly as shown on the DMBE's or MWAA's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the Contractor as shown on the Prequalification Application, Form C-32 or the Prequalification/Certification Renewal Application, Form C-32A, or authorized by letter from the Contractor. If DBE firms are used which have not been previously documented with the Contractor's bid and for which the Contractor now desires to claim credit toward the project goal, the Contractor shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE beginning work.

Form C-63 can be obtained from the VDOT website at:

<http://vdotforms.vdot.virginia.gov/>

The Contractor shall submit to the Responsible Engineer its progress schedule with a copy to the DCRO, as required by Section 108.03 of the Specifications or other such specific contract scheduling specification that may include contractual milestones, i.e., monthly or VDOT requested updates. The Contractor shall include a narrative of applicable DBE activities relative to work activities of the Contractor's progress schedule, including the approximate start times and durations of all DBE participation to be claimed for credit that shall result in full achievement of the DBE goal required in the contract.

On contracts awarded on the basis of good faith efforts, narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component or quarter of the work, as applicable, in which DBE work is to be performed, the Contractor shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any current DBEs not previously submitted who will perform the work during that major component or quarter for which the Contractor seeks to claim credit toward the contract DBE goal. The Contractor shall obtain the prior approval of the Department for any assistance it may provide to the DBE beyond its existing resources in executing its commitment to the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If the Contractor is aware of any assistance beyond a DBE's existing resources that the Contractor, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, the Contractor shall submit a new or revised narrative statement for VDOT's approval prior to assistance being rendered.

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified time frames, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received VDOT. Where such failures to provide

required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

K. Documentation Required for Semi-final Payment

On those projects nearing completion, the Contractor must submit Form C-63 marked “Semi-Final” within twenty (20) days after the submission of the last regular monthly progress estimate to the DCRO. The form must include each DBE used on the contract work and the work performed by each DBE. The form shall include the actual dollar amount paid to each DBE for the accepted creditable work on the contract. The form shall be certified under penalty of perjury, or other applicable law, to be accurate and complete. VDOT will use this certification and other information available to determine applicable DBE credit allowed to date by VDOT and the extent to which the DBEs were fully paid for that work. The Contractor shall acknowledge by the act of filing the form that the information is supplied to obtain payment regarding a federal participation contract. A letter of certification, signed by both the prime Contractor and appropriate DBEs, will accompany the form, indicating the amount, including any retainage, if present, that remains to be paid to the DBE(s).

L. Documentation Required for Final Payment

On those projects that are complete, the Contractor shall submit a final Form C-63 marked “Final” to the DCRO, within thirty (30) days of the final estimate. The form must include each DBE used on the contract and the work performed by each DBE. The form shall include the actual dollar amount paid to each DBE for the creditable work on the contract. VDOT will use this form and other information available to determine if the Contractor and DBEs have satisfied the DBE contract goal percentage specified in the contract and the extent to which credit was allowed. The Contractor shall acknowledge by the act of signing and filing the form that the information is supplied to obtain payment regarding a federal participation contract.

M. Prompt Payment Requirements

The Contractor shall make prompt and full payment to the subcontractor(s) of any retainage held by the prime Contractor after the subcontractor’s work is satisfactorily completed.

For purposes of this Special Provision, a subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by VDOT. When VDOT has made partial acceptance of a portion of the prime contract, the Department will consider the work of any subcontractor covered by that partial acceptance to be

satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

Upon VDOT's payment of the subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Contractor for such work, the Contractor shall make compensation in full to the subcontractor for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subcontractor's portion of the work shall mean the Contractor has issued payment in full, less agreed upon retainage, if any, to the subcontractor for that portion of the subcontractor's work that VDOT paid to the Contractor on the monthly progress estimate.

The Contractor shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from VDOT in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

If the Contractor fails to make payment for the subcontractor's portion of the work within the time frame specified herein, the subcontractor shall contact the Responsible Engineer and the Contractor's bonding company in writing. The bonding company and VDOT will investigate the cause for non-payment and, barring mitigating circumstances that would make the subcontractor ineligible for payment, ensure payment in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations, and to bind the Contractor's subcontractors contractually to those prompt payment requirements.

Nothing contained herein shall preclude the Contractor from withholding payment to the subcontractor in accordance with the terms of the subcontract in order to protect the Contractor from loss or cost of damage due to a breach of agreement by the subcontractor.

N. Miscellaneous DBE Program Requirements

Loss of DBE Eligibility: When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

1. When a Bidder/Contractor has made a commitment to use a DBE firm that is not currently certified, thereby making the Contractor ineligible to receive DBE participation credit for work performed, and a subcontract has not been executed, the ineligible DBE firm does not count toward either the contract goal or overall goal. The Contractor shall meet the contract goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the Contract Engineer that it has made good faith efforts to do so.

2. When a Bidder/Contractor has executed a subcontract with a certified DBE firm prior to official notification of the DBE firm's loss of eligibility, the Contractor may continue to use the firm on the contract and shall continue to receive DBE credit toward its DBE goal for the subcontractor's work.
3. When VDOT has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before VDOT has issued the notice of its ineligibility shall count toward the contract goal.

Termination of DBE: If a certified DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, the Contractor must promptly request approval to substitute or replace that firm in accordance with this section of this Special Provision.

The Contractor, as aforementioned in **DBE Program-Related Certifications Made by Bidders/Contractors**, shall notify VDOT in writing before terminating and/or replacing the DBE that was committed as a condition of contract award or that is otherwise being used or represented to fulfill DBE contract obligations during the contract performance period. Written consent from the Department for terminating the performance of any DBE shall be granted only when the Contractor can demonstrate that the DBE is unable, unwilling, or ineligible to perform its obligations for which the Contractor sought credit toward the contract DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE shall not be based on the Contractor's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a certified DBE.

1. All Contractor requests to terminate, substitute, or replace a certified DBE shall be in writing, and shall include the following information:
 - (a) The date the Contractor determined the DBE to be unwilling, unable, or ineligible to perform.
 - (b) The projected date that the Contractor shall require a substitution or replacement DBE to commence work if consent is granted to the request.
 - (c) A brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to the Contractor's assertion that the DBE is unwilling, unable, or ineligible to perform;
 - (d) A brief statement of the affected DBE's capacity and ability to perform the work as determined by the Contractor;

- (e) A brief statement of facts regarding actions taken by the Contractor which are believed to constitute good faith efforts toward enabling the DBE to perform;
 - (f) The current percentage of work completed on each bid item by the DBE;
 - (g) The total dollar amount currently paid per bid item for work performed by the DBE;
 - (h) The total dollar amount per bid item remaining to be paid to the DBE for work completed, but for which the DBE has not received payment, and with which the Contractor has no dispute;
 - (i) The total dollar amount per bid item remaining to be paid to the DBE for work completed, but for which the DBE has not received payment, and over which the Contractor and/or the DBE have a dispute.
2. Contractor's Written Notice to DBE of Pending Request to Terminate and Substitute with another DBE.

The Contractor shall send a copy of the "request to terminate and substitute" letter to the affected committed DBE firm, in conjunction with submitting the request to the DCRO. The affected DBE firm may submit a response letter to the Department within two (2) business days of receiving the notice to terminate from the Contractor. The affected DBE firm shall explain its position concerning performance on the committed work. The Department will consider both the Contractor's request and the DBE's response and explanation before approving the Contractor's termination and substitution request, or determining if any action should be taken against the Contractor.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Contractor is unsuccessful in notifying the affected DBE firm, the Department will verify that the affected, committed DBE firm is unable or unwilling to continue the contract. The Department will immediately approve the Contractor's request for a substitution.

3. Proposed Substitution of Another Certified DBE

Upon termination of a DBE, the Contractor shall use reasonable good faith efforts to replace the terminated DBE. The termination of such DBE shall not relieve the Contractor of its obligations pursuant to this section, and the unpaid portion of the terminated DBE's contract will not be counted toward the contract goal.

When a DBE substitution is necessary, the Contractor shall submit an amended Form C-111 with the name of another DBE firm, the proposed work to be performed by that firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The

Contractor shall furnish all pertinent information including the contract I.D. number, project number, bid item, item description, bid unit and bid quantity, unit price, and total price. In addition, the Contractor shall submit documentation for the requested substitute DBE as described in this section of this Special Provision.

Should the Contractor be unable to commit the remaining required dollar value to the substitute DBE, the Contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. The Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are viewed by VDOT as merely superficial or pro-forma will not be considered good faith efforts to meet the contract goal for DBE participation. The Contractor must document the steps taken that demonstrated its good faith efforts to obtain participation as set forth in the **Good Faith Efforts Described** section of this Special Provision.

Factors Used to determine if a DBE Trucking Firm is performing a CUF:

The following factors will be used to determine whether a DBE trucking company is performing a CUF:

1. To perform a CUF the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE is responsible by subcontract on a particular contract. There shall not be a contrived arrangement, including, but not limited to, any arrangement that would not customarily and legally exist under regular construction project subcontracting practices for the purpose of meeting the DBE contract goal;
2. The DBE must own and operate at least one fully licensed, insured, and operational truck used in the performance of the contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the necessary materials or supplies;
3. The DBE receives full contract goal credit for the total reasonable amount the DBE is paid for the transportation services provided on the contract using trucks the DBE owns, insures, and operates using drivers that the DBE employs and manages;
4. The DBE may lease trucks from another certified DBE firm, including from an owner-operator who is certified as a DBE. The DBE firm that leases trucks from another DBE will receive credit for the total fair market value actually paid for transportation services the lessee DBE firm provides on the contract;
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees, *not to exceed the value of transportation services provided by DBE-owned trucks on the*

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contract. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

EXAMPLE

DBE Firm X uses two (2) of its own trucks on a contract. The firm leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z.

<u>Firm X</u>		Value of Trans. Serv.
		(For Illustrative Purposes Only)
Truck 1	Owned by DBE	\$100 per day
Truck 2	Owned by DBE	\$100 per day
<u>Firm Y</u>		
Truck 1	Leased from DBE	\$110 per day
Truck 2	Leased from DBE	\$110 per day
<u>Firm Z</u>		
Truck 1	Leased from Non DBE	\$125 per day
Truck 2	Leased from Non DBE	\$125 per day
Truck 3	Leased from Non DBE	\$125 per day
Truck 4	Leased from Non DBE	\$125 per day
Truck 5	Leased from Non DBE*	\$125 per day
Truck 6	Leased from Non DBE*	\$125 per day

DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z (not to exceed the value of transportation services provided by DBE-owned trucks).

Credit = 8 Trucks
Total Value of Transportation Services = \$840

In all, full DBE credit would be allowed for the participation of eight (8) trucks (twice the number of DBE trucks owned and leased) and the dollar value attributable to the Value of Transportation Services provided by the 8 trucks.

* With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

6. For purposes of this section, the lease must indicate that the DBE firm leasing the truck has exclusive use of and control over the truck. This will not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, provided the lease gives the DBE absolute priority for and control over the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm that has leased the truck at all times during the life of the lease.

Data Collection: In accordance with 49CFR Section 26.11, all firms bidding on prime contracts and bidding or quoting subcontracts on federal-aid projects shall provide the following information to the Contract Engineer annually.

- Firm name
- Firm address
- Firm's status as a DBE or non-DBE
- The age of the firm and
- The annual gross receipts of the firm

The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. However, the above information can be submitted by means of the Annual Gross Receipts Survey as required in the Prequalification/Certification application.

All bidders, including DBE prime Contractor bidders, shall complete and submit to the Contract Engineer the Subcontractor/Supplier Solicitation and Utilization Form C-48 for each bid submitted; to be received within ten (10) business days after the bid opening. Failure of bidders to submit this form in the time frame specified may be cause for disqualification of the bidder and rejection of their bid in accordance with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge specifications.

O. Suspect Evidence of Criminal Behavior

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted, prosecution.

Suspected DBE Fraud

In appropriate cases, VDOT will bring to the attention of the U. S. Department of Transportation (USDOT) any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 49CFR Part 31.

P. Summary of Remedies for Non-Compliance with DBE Program Requirements

Failure of any bidder\Contractor to comply with the requirements of this Special Provision for Section 107.15 of the Virginia Road and Bridge Specifications, which is deemed to be a condition of bidding, or where a contract exists, is deemed to constitute a breach of contract shall be remedied in accordance with the following:

1. Disadvantaged Business Enterprise (DBE) Program Requirements

The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein.

2. DBE Program-Related Certifications Made by Bidders\Contractors

Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each certified DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. Where a contract exists and where the Contractor, DBE firm, or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract requirements have not been met,

and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

3. Disqualification of Bidder

Bidders may be disqualified from bidding for failure to comply with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge Specifications.

4. Bidding Procedures

The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid. If the lowest bidder is rejected for failure to submit required documentation in the specified time frames, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth.

In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were to the extent a bidder actively and aggressively seeking to meet the requirements would make. Regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111, C-112, C-48, and Form C-49, as aforementioned. The Contractor is encouraged to seek additional participation during the life of the contract.

If the Contractor fails to conform to the schedule of DBE participation as shown on the progress schedule, or at any point at which it is clearly evident that the remaining dollar value of allowable credit for performing work is insufficient to obtain the scheduled participation, the Contractor and any aforementioned affiliates may be enjoined from bidding for 60 days or until such time as conformance with the schedule of DBE participation is achieved. In such instances, the Contractor is expected to seek DBE participation towards meeting the goal during the prosecution of the contract.

If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the State Construction Engineer to

substantiate that failure was due solely to quantitative underrun(s) or elimination of items subcontracted to DBEs, and that all feasible means have been used to obtain the required participation. The State Construction Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. The enjoinder period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

5. Verification of DBE Participation and Imposed Damages

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified time frames, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received by VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

In addition to the remedies described heretofore in this provision VDOT also exercises its rights with respect to the following remedies:

Suspect Evidence of Criminal Behavior

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted prosecution.

In appropriate cases, VDOT will bring to the attention of the U. S. Department of Transportation (USDOT) any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 49 CFR Part 31.

EXHIBIT E – FEDERAL REQUIREMENTS

[Same as Exhibit U to the Comprehensive Agreement.]

EXHIBIT U
FEDERAL REQUIREMENTS

<u>Exhibit Description</u>	<u>No. of Pages</u>
Attachment 1 – Federal Provisions	3
Attachment 2 – FHWA Form 1273	25
Attachment 3 – Wage Determination of the Secretary of Labor	10
Attachment 4 – Special Provision for Notice of Requirement for Affirmative Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	9
Attachment 5 – Debarment and Suspension Certification	1
Attachment 6 – Lobbying Certification	2
Attachment 7 – [RESERVED]	1
Attachment 8 – Compliance with Buy America Requirements	2
Attachment 9 – Special Provision for Use of Domestic Metal	4

ATTACHMENT 1 TO EXHIBIT U

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION FACILITIES

GENERAL. — The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to the Work as a result of the Project being financed in part with Federal funds will apply to such Work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit U. Whenever in said required contract provisions references are made to:

(a) "SHA contracting officer", "SHA resident engineer", or "authorized representative of the SHA", such references shall be construed to mean the Department or its Authorized Representative;

(b) "contractor", "prime contractor", "bidder" or "prospective primary participant", such references shall be construed to mean the Concessionaire or its authorized representative and/or the Design-Build Contractor or its authorized representative, as may be appropriate under the circumstances;

(c) "contract" or "prime contract", such references shall be construed to mean the Design-Build Contract;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant" or "lower tier subcontractor", such references shall be construed to mean, as appropriate, Contractors other than the Design-Build Contractor; and

(e) "department", "agency" or "department or agency entering into this transaction", such references shall be construed to mean the Department, except where a different department or agency is specified.

In the event of any discrepancy between the provisions of this Exhibit U that are intended to incorporate or summarize statutes, rules or regulations promulgated by the Federal Government and the actual statutes, rules or regulations in effect from time to time, the actual statutes, rules or regulations shall apply and supersede the inconsistent provisions set forth herein.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, the Concessionaire shall cause the contractor to comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of

the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to this Project. Pertinent sections of said Code are incorporated within other sections of the Contract and the Department Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

FHWA FORM 1273 SECTIONS VII.1 AND VII.2 INAPPLICABLE – Pursuant to 23 CFR 635.116(d), the requirements of Sections VII.1 and VII.2 of FHWA Form 1273 (Attachment 2 to Exhibit U to the Agreement) are inapplicable to the Agreement.

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), the Concessionaire and its Contractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of the Concessionaire and Contractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), the Concessionaire and its Contractors shall retain

all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. The Concessionaire agrees to include this section in each Contract at each tier, without modification except as appropriate to identify the Contractor who will be subject to its provisions.

SUBCONTRACTING

a. Any distribution of work shall be evidenced by a written binding agreement on file at the project site. Where no field office exists, such agreement shall be readily available upon request to Department inspector(s) assigned to the project.

b. The provisions contained in Form FHWA-1273 specifically, and other federal provisions included with the prime Contract are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into all contracts, as well as, appropriate subcontracts for work so as to be binding in those agreements.

ATTACHMENT 2 TO EXHIBIT U
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA FORM 1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime

contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion,

transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas,

transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed

under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the

applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the

Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. **Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are

defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--
Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

EXECUTION VERSION – JULY 31, 2012

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXECUTION VERSION – JULY 31, 2012

**ATTACHMENT 3 TO EXHIBIT U
FEDERAL PREVAILING WAGE RATES**

EXECUTION VERSION – JULY 31, 2012

General Decision Number: VA120020 04/20/2012 VA20

Superseded General Decision Number: VA20100112

State: Virginia

Construction Type: Highway

Counties: Alexandria*, Arlington, Clarke, Culpeper, Fairfax, Fairfax*, Falls Church*, Fauquier, Fredericksburg*, King George, Loudoun, Manassas Park*, Manassas*, Prince William, Spotsylvania, Stafford and Warren Counties in Virginia.

* INDEPENDENT CITIES

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Modification Number	Publication Date
0	01/06/2012
1	04/20/2012

* SUVA2010-010 02/01/2011

	Rates	Fringes
CARPENTER (STRUCTURE).....	\$ 18.55	
CEMENT MASON/CONCRETE FINISHER...\$	19.00	
ELECTRICIAN.....\$	42.06	
FORM SETTER.....\$	18.76	
IRONWORKER, REINFORCING.....\$	34.18	
IRONWORKER, STRUCTURAL.....\$	17.95	
LABORER		
Asphalt Raker.....\$	15.85	
Blaster.....\$	35.00	
Construction Worker I (Skilled Laborer).....\$	14.41	
Construction Worker II (Laborer).....\$	13.54	
Fence Erector.....\$	10.60	
Flagger.....\$	13.64	
Grade Checker.....\$	14.00	
Guardrail Erector.....\$	26.00	
Pipe Layer.....\$	19.00	
Power Tool Operator.....\$	15.00	
Sign Erector.....\$	15.00	
PAINTER.....\$	16.13	

EXECUTION VERSION – JULY 31, 2012

POWER EQUIPMENT OPERATOR:

Air Compressor.....	\$ 15.18
Asphalt Distributor.....	\$ 17.50
Asphalt Paver.....	\$ 16.50
Backhoe.....	\$ 20.59
Boom/Auger.....	\$ 18.50
Bulldozer (Utility).....	\$ 17.00
Bulldozer.....	\$ 20.40
Concrete Finisher Machine..	\$ 18.35
Concrete Saw.....	\$ 15.00
Crane, Derrick, Dragline (1 cm & under).....	\$ 24.00
Crane, Derrick, Dragline (over 1 cm).....	\$ 20.00
Crusher Tender.....	\$ 22.99
Drill Operator.....	\$ 14.00
Excavator (Gradall).....	\$ 18.00
Front End Loader (2 cm & under)	\$ 19.00
Front End Loader (over 2 cm)	\$ 20.42
Hydro Seeder.....	\$ 16.50
Mechanic.....	\$ 21.00
Mobile Mixer.....	\$ 17.00
Motor Grader (Fine Grade)..	\$ 27.25
Motor Grader (Rough Grade)..	\$ 24.82
Pavement Marking Operator..	\$ 17.00
Pavement Marking Truck Operator.....	\$ 13.45
Pavement Planing Groundman.	\$ 19.75
Pavement Planing Operator..	\$ 25.00
Pile Driver Operator.....	\$ 16.00
Roller (Finish).....	\$ 17.94
Roller (Rough).....	\$ 17.06
Slip-Form Paver.....	\$ 21.00
Slurry Seal Paver Machine..	\$ 12.00
Stone-Spreader.....	\$ 16.23
Tractor, Crawlers.....	\$ 17.31
Trenching Machine.....	\$ 19.00
Vacuum Machine.....	\$ 16.64

TRAFFIC SIGNALIZATION:

Traffic Signal Installation	\$ 21.16
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TRUCK DRIVER

Fuel & Lubricant Service	
Truck Driver.....	\$ 16.50
Truck Driver (Multi-Rear Axle).....	\$ 18.00
Truck Driver (Single Rear Axle).....	\$ 17.50
Truck Driver (Tandem Rear Axle).....	\$ 15.97
Truck Driver, Heavy Duty (7 c.y. & under).....	\$ 17.75
Truck Driver, Heavy Duty (over 7 c.y.).....	\$ 19.00

EXECUTION VERSION – JULY 31, 2012

Truck, Utility.....\$ 11.80
WELDER.....\$ 13.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

EXECUTION VERSION – JULY 31, 2012

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

EXECUTION VERSION – JULY 31, 2012

General Decision Number: VA120067 07/06/2012 VA67

Superseded General Decision Number: VA20100159

State: Virginia

Construction Types: Heavy (Heavy and Sewer and Water Line)

Counties: Manassas Park*, Manassas* and Prince William Counties in Virginia.

*INDEPENDENT CITIES

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)

Modification Number	Publication Date
0	01/06/2012
1	02/17/2012
2	07/06/2012

BRVA0001-003 05/01/2011

	Rates	Fringes
MASON - STONE.....	\$ 32.88	13.99

CARP0132-018 05/01/2011

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 26.74	7.45

ELEC0026-019 06/01/2011

	Rates	Fringes
ELECTRICIAN.....	\$ 39.75	3%+13.10+a

a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day.

ENGI0077-019 09/08/2010

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
35 ton Cranes and Above.....	\$ 31.09	7.87+a
Cranes Below 35 tons.....	\$ 30.63	7.87+a
Mechanic.....	\$ 32.46	7.87+a
Tower and Climbing Cranes....	\$ 31.09	7.87+a
Tower Cranes and Cranes		
100 tons and Over.....	\$ 32.09	7.87+a

EXECUTION VERSION – JULY 31, 2012

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

b. PREMIUM PAY:

Tower crane and cranes 100-ton and over to receive \$1.00 per hour premium.

LABO0710-010 04/01/2010

	Rates	Fringes
LABORER: Pipelayer.....	\$ 16.61	5.41

* PAIN0051-014 06/01/2012

	Rates	Fringes
GLAZIER		
Glazing Contracts \$2 million and under.....	\$ 24.17	9.36
Glazing Contracts over \$2 million.....	\$ 27.14	9.36

PLAS0891-006 05/01/2010

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 27.15	9.58

SUVA2010-057 09/03/2010

	Rates	Fringes
DIVER TENDER.....	\$ 22.53	3.98
DIVER.....	\$ 23.73	4.21
IRONWORKER, REINFORCING.....	\$ 22.45	11.85
IRONWORKER, STRUCTURAL.....	\$ 20.55	8.25
LABORERS		
Common or General.....	\$ 11.02	1.32
Flagger.....	\$ 7.39	0.20
Landscape.....	\$ 10.00	
POWER EQUIPMENT OPERATOR:		
Backhoe.....	\$ 18.47	0.75
Bobcat/Skid Loader.....	\$ 11.40	
Bulldozer.....	\$ 17.54	
Crane (Tower).....	\$ 23.29	6.02
Excavator.....	\$ 17.79	
Loader.....	\$ 14.60	0.75
Trackhoe.....	\$ 12.75	1.24
Tugboat.....	\$ 19.00	

EXECUTION VERSION – JULY 31, 2012

TRUCK DRIVER, Includes All
Dump Trucks.....\$ 12.16

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with
characters other than "SU" denotes that the union
classification and rate have found to be prevailing for that
classification. Example: PLUM0198-005 07/01/2011. The
first four letters , PLUM, indicate the international union and
the four-digit number, 0198, that follows indicates the local
union number or district council number where applicable ,
i.e., Plumbers Local 0198. The next number, 005 in the
example, is an internal number used in processing the wage
determination. The date, 07/01/2011, following these
characters is the effective date of the most current
negotiated rate/collective bargaining agreement which would be
July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any
changes in the collective bargaining agreements governing the
rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived
from survey data by computing average rates and are not union
rates; however, the data used in computing these rates may
include both union and non-union data. Example: SULA2004-007
5/13/2010. SU indicates the rates are not union rates, LA
indicates the State of Louisiana; 2004 is the year of the
survey; and 007 is an internal number used in producing the
wage determination. A 1993 or later date, 5/13/2010, indicates

EXECUTION VERSION – JULY 31, 2012

the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

EXECUTION VERSION – JULY 31, 2012

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

ATTACHMENT 4 TO EXHIBIT U

SF030AF-0708

Reissued July, 2008

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

Females- 6.9%

Minorities - See Attachment "A"

The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executives Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 workings days the award of any construction subcontract in excess of \$10,000 at any tier for construction works under this contract. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated

starting and completion dates of the subcontract. and the geographical area in which the contract is to be performed.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As, used in this provision:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually

required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the

Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

- i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the

group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even though the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from Its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ATTACHMENT A

Economic Area	Goal (Percent)
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg.	
6800 Roanoke, VA.....	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties.....	
.12.0	
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll;	
VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland;	
VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski;	
VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista;	
VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg;	
VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro;	
WV Pendleton.	
022 Richmond, VA:	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA.....	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell;	
VA Petersburg.	
6760 Richmond, VA	24.9
VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA	
Henrico; VA New Kent; VA Powhatan; VA Richmond.	
Non-SMSA Counties.....	27.9
VA Albermarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline;	
VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA	
Greensville; VA Halifax; VA King and Queen; VA King William; VA	
Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA .Mecklenburg; VA	
Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond	
VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023 Norfolk - Virginia Beach - Newport News VA:	
SMSA Counties:	
5680 Newport News- Hampton, VA.....	27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport	
News; VA Williamsburg.	
5720 Norfolk - Virginia Beach - Portsmouth, VA - NC	26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA	
Suffolk; VA Virginia Beach.	
Non-SMSA Counties.....	29.7
NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford;	
NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews;	

VA Middlesex; VA Southampton; VA Surry; VA Franklin.	
Washington, DC:	
020 Washington, DC.	
SMSA Counties:	
8840 Washington, DC - MD - VA	28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince	
Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William	
VA Alexandria; VA Fairfax City; VA Falls Church.	
Non- SMSA Counties.....	25.2
MD Calvert; MD Frederlck; MD St. Marys; MD Washington; VA Clarke;	
VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA	
Rappahannock; VA Shennandoah; VA Spottsylvania; VA Stafford; VA	
Warren; VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley;	
WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
Tennessee:	
052 Johnson City - Kingsport - Brlstol, TN - VA	
SMSA Counties:	
3630 Johnson City - Kingsport -Bristol, TN-VA	2.6
TN Carter; TN HawkIns; TN Sullivan; TN Washington; VA Scott: VA	
Washington; VA Bristol.	
Non-SMSA Counties.....	3.2
TN Greene; TN Johnson; VA Buchanan; VA Dickenson; Va Lee;	
VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell;	
WV Mercer.	

ATTACHMENT 5 TO EXHIBIT U

DEBARMENT AND SUSPENSION CERTIFICATION

1. By signing and submitting its proposal or bid, and by executing the Comprehensive Agreement or Subcontract, each prospective the Concessionaire and Contractor (at all tiers) shall be deemed to have signed and delivered the following certification:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective the Concessionaire or Contractor is unable to certify to any of the statements in this certification, such Person shall attach a certification to its proposal or bid, or shall submit it with the executed Comprehensive Agreement or Contract, stating that it is unable to provide the certification and explaining the reasons for such inability.

ATTACHMENT 6 TO EXHIBIT U

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the Comprehensive Agreement or Subcontract, each prospective the Concessionaire and Contractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective the Concessionaire/Contractor certifies, to the best of its knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of **ANY** Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Comprehensive Agreement or Contract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The Concessionaire/Contractor shall require that the language of this certification be included in all lower tier Contracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

NOTE: THE CONCESSIONAIRE AND EACH CONTRACTOR IS REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN CONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH CONTRACTOR BEING PAID \$100,000 OR MORE.

ATTACHMENT 7 TO EXHIBIT U

[RESERVED]

ATTACHMENT 8 TO EXHIBIT U

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The Concessionaire shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in this Agreement only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided that the cost of such materials included in any Contract between the Concessionaire and a Contractor involving construction work does not exceed 0.1% of the contract price of such Contract.

Concurrently with execution of the Agreement, the Concessionaire has completed and submitted, or shall complete and submit, to the Department a Buy America Certificate, in format below. After submittal, the Concessionaire is bound by its original certification. However, in accordance with 49 USC 5323(j)(7), the Concessionaire may have the opportunity to correct an inadvertent error in its certification. The Concessionaire may correct any certification of noncompliance or failure to properly complete this certification if the Concessionaire attests under penalty of perjury that it submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing such inadvertent or clerical error is on the Concessionaire. The Concessionaire's failure to sign the certification is not considered an inadvertent or clerical error.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Agreement be investigated, the Concessionaire has the burden of proof to establish that it is in compliance.

At the Concessionaire's request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, the Concessionaire certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department. A request for a waiver shall be treated as a Concessionaire request for a Deviation under Section 14.03 of the Agreement.

BUY AMERICA CERTIFICATE

Certificate of Compliance

The Concessionaire hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2), and the applicable regulations in 23 CFR 635.410.

Date: _____

Signature: _____

Concessionaire's Name: _____

Title: _____

Or

Certificate for Noncompliance

The Concessionaire hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2), but may qualify for a waiver to the requirement to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and regulations in 23 CFR 635.410.

Date: _____

Signature: _____

Concessionaire's Name: _____

Title: _____

ATTACHMENT 9 TO EXHIBIT U

S102CF1-0309

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
USE OF DOMESTIC MATERIAL

February 26, 2009

SECTION 102.05 PREPARATION OF BID of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of Title 23 CFR, hereinafter referred to as “Buy America”, except as otherwise specified, all iron and steel products (including miscellaneous steel items such as fasteners, nuts, bolts and washers) to be permanently incorporated for use on federal aid projects shall be produced in the United States of America regardless of the percentage they exist in the manufactured product or final form they take. Therefore, "Domestically produced in the United States of America" means all manufacturing processes must occur in the United States of America, to mean, in one of the 50 States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. Manufacturing processes are defined as any process which alters or modifies the chemical content, physical size or shape or final finish of iron or steel material such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating whereby a raw material or a reduced iron ore material is changed, altered or transformed into a steel or iron item or product which, because of the process, is different from the original material. For the purposes of satisfying this requirement “coating” is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material. Materials used in the coating process need not be domestic materials.

For the purposes herein the manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing process takes place.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and/or iron products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from Buy America. The use of foreign source steel or iron billet is not acceptable

under the provisions of Buy America. For the purposes of this provision all steel or iron material not meeting the criteria as domestically produced in the United States of America will be considered as “foreign” material. All iron and steel items will be classified hereinafter as "domestic" or "foreign", identified by and subject to the provisions herein.

Domestically produced iron or steel ingots or billets shipped outside the United States of America for any manufacturing process and returned for permanent use in a project would not comply with “Buy America” requirements.

Buy America provisions do not apply to iron or steel products used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor’s convenience.

Section 635.410(b) of Title 23 CFR permits a minimal amount of steel or iron material to be incorporated in the permanent work on a federal-aid contract. The cost of such materials or products must not exceed one-tenth of one percent of the contract amount or \$2500, whichever is greater. The cost of the foreign iron or steel material is defined as its monetary value delivered to the job site and supported by invoices or bill of sale to the Contractor. This delivered to site cost must include transportation, assembly, installation and testing.

In the event the total cost of all "foreign" iron and steel product or material does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater, the use of such material meeting the limitations herein will not be restricted by the domestic requirements herein. However, by signing the bid, the Bidder certifies that such cost does not exceed the limits established herein.

Waivers:

With prior concurrence from Federal Highway Administration (FHWA) headquarters, the Federal Highway Division Administrator may grant a waiver to specific projects provided it can be demonstrated:

1. that the use of domestic steel or iron materials would be inconsistent with the public interest; or
2. materials or products requested for use are not produced in the United States in sufficient or reasonably available quantities and are of satisfactory quality for use in the permanent work.

The waiver request shall be submitted with supportive information to include:

1. Project number\description, project cost, waiver item, item cost, country of origin for the product, reason for the waiver, and
2. Analysis of redesign of the project using alternative or approved equal domestic products.

In order to grant such a waiver the request for the waiver must be published in the Federal Register for a period not less than 15 days or greater than 60 days prior to waiving such requirement. An initial 15 day comment period to the waiver will be available to the public by means of the FHWA website:

<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm>. Following that initial 15 day period of review and comment the request for waiver will be published by the FHWA in the Federal Register. The effective date of the FHWA finding, either to approve or deny the waiver request, will be 15 days following publication in the Federal Register.

Only the FHWA Administrator may grant nationwide waivers which still are subject to the public rulemaking and review process.

Alternative Bidding Procedures:

An alternative bidding procedure may be employed to justify the use of foreign iron and/or steel. To qualify under this procedure the total project is bid using two alternatives, one based on the use of domestic products and the other, the use of corresponding foreign source steel and/or iron materials.

In accordance with the provisions of Section 103.02 the Contract will be awarded to the lowest responsive and responsible bidder who submits the lowest total bid based on furnishing domestic iron or steel unless such total exceeds the lowest total bid based on furnishing foreign iron and/or steel by more than 25 percent, in which case the award will be made to the lowest responsive and responsible bidder furnishing foreign iron and/or steel based upon furnishing verifiable supportive data. The bidder shall submit a bid based on permanently incorporating only domestic iron and/or steel in the construction of the project. The bidder may also submit a bid for the same proposed contract based on being allowed to permanently incorporate corresponding foreign iron and/or steel materials meeting the other contract requirements into the work on the contract. If he chooses to submit such a bid, that alternate bid shall clearly indicate which foreign iron and/or steel items will be permanently installed in the work as well as contain prices for all other items listed in the corresponding domestic proposal to complete a total "Foreign" bid.

In the event the contract is awarded to the bidder furnishing foreign iron and/or steel materials or items the provision for price adjustment of steel items will be permitted, however, price fluctuations shall use the U.S. index as stated in the Special Provision for Price Adjustment For Steel. The Contractor must indicate which corresponding eligible steel items he chooses price adjustment to apply. In the event the contract is awarded to a bidder furnishing foreign iron and/or steel items and during the life of that contract the Contractor discovers he can not furnish foreign iron and/or steel material as originally anticipated and agreed upon, he shall be responsible to honor the total bid price and furnish such iron and/or steel materials meeting the contract requirements from other sources as necessary to complete the work.

In the event the Contractor proposes to furnish "foreign" iron and steel and can verify a savings in excess of 25 percent of the overall project cost if bid using domestic materials, the Contractor shall submit a second complete paper bid proposal clearly marked "Foreign"

including Form C-7 and supportive data supplement on all sheets. Supportive data shall list, but not be limited to, origin of material, best price offer, quantity and complete description of material, mill analysis, evidence or certification of conformance to contract requirements, etc. The “Foreign” bid shall be completed using the best price offer for each corresponding bid item supplying foreign material in the alternative bid and submit the same with the Contractor’s “Domestic” bid. The Contractor shall write the word “Foreign” by the bid total shown on Form C-7 as well as last page of Schedule of Items showing the total bid amount. The bidder shall also contact the State Contract Engineer to inform him that he is also submitting an alternate “Foreign” paper bid.

The information listed on the supportive data sheet(s) will be used to provide the basis for verification of the required cost savings. In the event comparison of the prices given, or corrected as provided in Section 103.01 of the Specifications, shows that use of "foreign" iron and steel items does not represent a cost savings exceeding the aforementioned 25 percent, "domestic" iron and/or steel and prices given there for shall be used and the "100 percent Domestic Items Total" shall be the Contractor's bid.

Certification of Compliance:

Where domestic material is supplied, prior to final payment the Contractor shall furnish to the Department a certificate of compliance (such as may be furnished by steel mill test reports) that all steel and/or iron products supplied to the project except as may be permitted (one-tenth of one percent of the total contract cost or \$2,500, whichever is greater) and permanently incorporated into the work satisfies the domestic requirements herein. This certification shall contain a definitive statement about the origin of all products covered under the provisions of Buy America as stated herein.

In lieu of the Contractor providing personal certification, the Contractor may furnish a stepped certification in which each handler of the product, such as supplier, fabricator, manufacturer, processor, etc. furnishes an individual certification that their step in the process was domestically performed.