COMPREHENSIVE AGREEMENT TO DEVELOP AND MAINTAIN COALFIELDS EXPRESSWAY

This COMPREHENSIVE AGREEMENT TO DEVELOP AND MAINTAIN COALFIELDS EXPRESSWAY ("Agreement") is made and entered into as of January 11, 2002, by and between the Virginia Department of Transportation ("Department"), a department of the Commonwealth of Virginia ("State"), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219, and Kellogg Brown & Root, Inc., a Delaware corporation ("KBR"), the address of which is 601 Jefferson Avenue, Houston, Texas 77002.

ARTICLE I

RECITALS

Section 1.1. On March 25, 1995 the Governor of the State signed into law, effective July 1, 1995, the Public-Private Transportation Act (as amended, the "PPTA").

Section 1.2. In enacting the PPTA, the State General Assembly found and declared, among other things, that:

(a) there is a public need for timely acquisition or construction of and improvements to transportation facilities within the State that are compatible with state and local transportation plans;

(b) such public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved; and

(c) authorizing private entities to acquire, construct, improve, maintain, and/or operate one or more transportation facilities may result in the availability of such transportation facilities to the public in a more timely or less costly fashion, thereby serving the public safety and welfare.

Section 1.3. The PPTA grants the Department the authority to allow private entities to construct and/or operate qualifying transportation facilities if the Department determines there is a need for the facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion.

Section 1.4. The PPTA allows for both solicited and unsolicited project proposals.

Section 1.5. On April 1, 2001 the Department adopted revised Implementation Guidelines developed by the Commonwealth Transportation Commissioner (the "Commissioner") for the selection of solicited and unsolicited proposals for negotiation under the Act.
Section 1.6. Pursuant to the PPTA, on December 6, 1999, KBR submitted an unsolicited conceptual proposal (the “Conceptual Proposal”) to the Department for the design, construction, and maintenance of certain transportation facilities which collectively the Department refers to as the Coalfields Expressway (the “CFX”).

Section 1.7. The CFX will constitute an approximately fifty mile, four lane, primary highway with a western terminus near Pound, Virginia, on U.S. Route 23 and proceeding through Wise, Dickenson and Buchanan counties to the eastern terminus at the West Virginia state border, following State Route 83 corridor through the area. The CFX will link with the West Virginia Coalfields Expressway near Paynesville, West Virginia.

Section 1.8. In accordance with the Implementation Guidelines, the Department duly posed and published notice of the Conceptual Proposal. During the posting period ending January 24, 2000, the Department received one competing proposal submitted by Koch Materials Company and APAC, Inc. dated January 24, 2000. In accordance with PPTA Guidelines, the Initial Review Committee reviewed the proposals submitted by both KBR and Koch/APAC for the development of the CFX based on the proposer’s qualifications and the technical and financial merits of the proposals.

Section 1.9. Following a determination by the Initial Review Committee that the Conceptual Proposal merited a further review, on April 20, 2000 the Commonwealth Transportation Board adopted a resolution approving the Conceptual Proposal for further evaluation and inviting KBR to submit a detailed proposal for consideration by the Public Private Transportation Advisory Panel (the “Advisory Panel”) in accordance with the Implementation Guidelines.

Section 1.10. On September 28, 2000, KBR submitted its detailed proposal (the “Detailed Proposal”) to the Advisory Panel for consideration.


Section 1.12. On September 26, 2001, negotiations with KBR for a comprehensive agreement, consisting of this Agreement and related agreements, commenced at the direction of the Commissioner.


Section 1.14.

Because financing of the entire CFX has not been obtained as of the date of execution of this Agreement, the CFX will be constructed in four Sections, with the Notice to Proceed for the Section Completion Work for each Section contingent upon securing of financing for such Section and satisfaction of other conditions precedent as described in Article IV, below: Section A consists of the section from Bull Gap to
Harmon Junction; Section B consists of the section from Pound to Clintwood; Section C consists of the section from Harmon Junction to the West Virginia State Line; and Section D consists of the section from Clintwood to Bull Gap.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Department and KBR agree as follows:
ARTICLE II
DEFINITIONS

All capitalized terms used in this Agreement but not expressly defined in this Agreement have the respective meanings set forth in Exhibit A attached to this Agreement.
ARTICLE III

ESTABLISHMENT OF PUBLIC-PRIVATE TRANSACTION

Section 3.1. Basic Agreement.

(a) Department and KBR agree that the Project, as described in Exhibit B attached hereto and as more particularly identified in the Project Scope attached as Appendix 6 to the Design-Build Contract, shall be designed, permitted, financed, acquired, constructed, equipped, managed, insured, operated and maintained in a transaction involving, together, a series of agreements setting forth distinct roles and responsibilities of the public and private sector participants.

(b) This Article III identifies and establishes the basic roles and responsibilities of such participants. This Article III is not intended, and shall not be construed, to impose any obligations on any party, or provide any party with any rights, that are in addition to any rights or obligations set forth elsewhere in this Agreement and the other Project Agreements in connection with the subject matter thereof.

(c) As described on Exhibit B, the Project shall be developed in four Sections. Upon execution of the Design-Build Contract, VDOT will issue a Notice to Proceed to the Contractor to undertake the Initial Engineering Work. Upon completion of sufficient engineering for KBR to be able to submit fixed prices for the Section Completion Work for each of Sections A, B, C and D and for the Department to evaluate such fixed prices, the Department and KBR will enter into a Section Supplement for each such Project Section containing a Contract Price for Section Completion Work and a Guaranteed Completion Date. The Department shall not be obligated to issue a Notice to Proceed for Section Completion Work for any Project Section until the conditions precedent set forth in Section 4.2, for such Project Section have been satisfied or waived in writing.

(d) KBR’s rights, obligations and liabilities with respect to the design and construction of the Project (the “Design-Build Duties”) shall be as stated in, or arising from, the Design-Build Contract. Notwithstanding any description of design and construction activities or of the Design-Build Contract appearing in this Agreement, this Agreement shall neither add to nor diminish from KBR’s Design-Build Duties.

Section 3.2. Parties to Transaction; Roles and Responsibilities.

(a) The parties to the transaction and the Project Agreements under which the Project shall be designed, permitted, financed, acquired, constructed, equipped, insured and maintained (if a maintenance agreement contemplated by Article VIII is executed) are the Department, the CTB, KBR and Halliburton Company (“Guarantor”).

(b) The Department:
(i) shall establish, pursuant to the Project Agreements, the terms and conditions under which the Project will be implemented;

(ii) hereby grants KBR the right to develop the Project in Project Sections on the terms and conditions set forth in this Agreement, the Design-Build Contract and the other Project Agreements and, subject to the provisions of Article VIII, to maintain some or all of the Project Sections in accordance with Article VIII;

(iii) shall provide funds for payment of the costs of design and construction of the Project as specified in this Agreement and the Design-Build Contract;

(iv) shall acquire title to and, as necessary and appropriate, condemn, all rights of way for the Project as provided in the Design-Build Contract; and

(v) shall take acceptance of each Project Section upon satisfactory completion thereof and operate such Project Section as a public highway.

(c) KBR:

(i) shall have the right and obligation to design, obtain all Regulatory Approvals for, perform Project Right of Way acquisition and utility relocation services for, and construct and perform all other Work respecting the Project as and when provided in the Design-Build Contract;

(ii) shall have the right and obligation to arrange the financing of the Initial Engineering Work and Section Completion Work of all Project Sections in accordance with Article VI;

(iii) shall cause the Project to be insured, as and when provided in the Design-Build Contract;

(iv) shall provide payment and performance bonds for the Work, as and when provided in the Design-Build Contract;

(v) shall use commercially reasonable efforts to cause certain equity contributions to be made by third parties as a condition precedent to the Notices to Proceed for Section Completion Work for Sections B, C and D, as described in Section 6.3;

(vi) shall cause Guarantor to guarantee performance and completion of all KBR’s obligations under this Agreement and the Design-Build Contract (including but not limited to KBR’s warranty and indemnification obligations), in accordance with the provisions of the Completion Guaranty; and
(vii) shall have the right to negotiate an agreement with the Department to provide maintenance services for each Project Section after Final Acceptance of such Project Section in accordance with Article VIII.

(d) Guarantor shall guarantee to the Department performance and completion of all KBR’s obligations under this Agreement and the Design-Build Contract (including but not limited to KBR’s warranty and indemnification obligations), in accordance with the provisions of the Completion Guaranty.

Section 3.3. Project Agreements. The Project Agreements and their content are briefly described below. The Project Agreements are to be read and construed together, and together constitute the comprehensive agreement under the PPTA (notwithstanding the fact that this Agreement is entitled “Comprehensive Agreement”).

(a) Comprehensive Agreement. The Department and KBR are entering into this Agreement to establish the general structure and arrangements for implementing the Project and to establish rights and responsibilities of the Parties respecting the Project.

(b) Design-Build Contract. Concurrently with execution of this Agreement, the Department and KBR are entering into the Design-Build Contract, in the form attached to this Agreement as Exhibit C, pursuant to which KBR shall have, among other things:

(i) the right and obligation to complete the Initial Engineering Work for each of Sections A, B, C and D not later than the dates set forth in Sections 4.3.

(ii) the right and obligation to complete the design and construction of Section A of the Project upon execution of the Section A Supplement in the form attached as Exhibit D hereto, containing a fixed Contract Price and Guaranteed Completion Date as agreed to by the Department and KBR, and satisfaction of certain other conditions precedent as described in Section 4.2 hereof;

(iii) the right and obligation to complete the design and construction of each of Sections B, C and D of the Project upon execution of the related Section Supplement in substantially the form attached hereto as Exhibit D, containing a fixed Contract Price and Guaranteed Completion Date for such Section as agreed to by the Department and KBR, and satisfaction of certain other conditions precedent as described in Section 4.2 hereof;

(iv) the right and obligation to obtain all Regulatory Approvals required to construct each Project Section and to open it for normal operation;

(v) the right and obligation to perform right of way acquisition and utility relocation services for each Project Section, including acquiring Project Right of Way in the name of the Department;

(vi) the obligation to post a payment bond and deliver performance bonds from each first tier construction subcontractor;
(vii) the obligation to obtain Final Acceptance of each Project Section by the Guaranteed Completion Date set forth in the related Section Supplement or to pay liquidated damages for every day Final Acceptance of the Project Section is delayed, subject to extension due to Force Majeure, Department-Caused Delays and certain Differing Site Conditions and to specified caps on liquidated damages;

(viii) the obligation to satisfy and to carry out Department standards, Department-approved preliminary design and specifications for the Project and applicable Laws, Ordinances and Regulations;

(ix) the obligation to provide specified warranties against design and construction defects;

(x) the obligation to insure the Project as and when provided in the Design-Build Contract; and

(xi) the right to enter onto the Project Right of Way as reasonably necessary to carry out the Work.

(c) Design-Build Contract—Section Completion Work. KBR shall not have the right or the obligation to commence Section Completion Work on Sections A, B, C and D of the Project until the conditions precedent to the Notice to Proceed for each such Section, as set forth in Section 4.2, are satisfied or waived in writing, including the acceptance by the Department of a definitive Plan of Finance for each such Project Section in accordance with Section 6.2, and providing certain equity contributions as described in Section 4.2(c). The Contract Price for Section Completion Work for each such Project Section, CPM/Payment Schedule, Guaranteed Completion Date (based on an assumed Notice to Proceed date) and other related provisions will be set forth in a Section Supplement in the form attached hereto as Exhibit D hereto. It is intended that all other terms of the Design-Build Contract shall continue in full force and effect with respect to the Project Completion Work for each such Project Section.

(d) Completion Guaranty. Concurrently with execution of this Agreement, Guarantor is executing and delivering the Completion Guaranty, in the form attached to this Agreement as Exhibit E, under which it will give the guarantees described in Section 3.2(d).

Section 3.4. Nature of Parties’ Interests Under Certain Project Agreements. The Department and KBR intend and agree that:

(a) Neither KBR nor any entity providing financing for the Project shall have any fee title, leasehold estate, easement or other real property interest of any kind in or to the Project or the Project Right of Way by virtue of this Agreement, any of the other Project Agreements or otherwise;

(b) KBR’s property interests under this Agreement are limited to contract rights constituting intangible personal property (and not real estate interests); and
The Department will be the sole owner of fee simple title to the Project and the Project Right of Way and all improvements constructed and all tangible personal property installed pursuant to the Design-Build Contract or otherwise in connection with the Project, with full power and authority to possess, control and utilize the Project and Project Right of Way, subject only to the terms and conditions of the Project Agreements.

Section 3.5. Development Fee.

(a) The Department acknowledges that, prior to the Initial Execution Date, KBR incurred costs necessary to develop the Project, including consulting expenses. In consideration therefor, the Department will pay a $4,000,000 reimbursement to KBR as a portion of the Initial Engineering Price under the first Draw Request after issuance of a Notice to Proceed for Initial Engineering Work. The $4,000,000 reimbursement is included within the Initial Engineering Price of $78,000,000 as set forth in Section 14.1.1 of the Design-Build Contract.

(b) KBR shall receive the following development fees in connection with development of a Plan of Finance and Section Completion Work for each Project Section:

(i) $1,000,000 upon issuance of a Notice to Proceed for Section A Completion Work;

(ii) $1,500,000 upon issuance of a Notice to Proceed for Section B Completion Work;

(iii) $1,500,000 upon issuance of a Notice to Proceed for Section C Completion Work;

(iv) $2,000,000 upon issuance of a Notice to Proceed for Section D Completion Work;

(c) The development fees described in Section 3.5 (b) shall be in addition to any other fees payable to KBR pursuant to the Design-Build Contract, any maintenance contract entered into pursuant to Article VII of this Agreement or any other Project Agreement.
ARTICLE IV

INITIAL ENGINEERING WORK AND SECTION COMPLETION WORK

Section 4.1 Pricing of Section Completion Work. Upon completion of the so much of the Initial Engineering Work necessary for KBR to provide a fixed price for the Section Completion Work for each Project Section, KBR shall submit to the Department its proposed Fixed Price for the Section Completion Work for such Section, and any allowances as specified in the form of Section A Supplement attached hereto as Exhibit D., and proposed CPM/Payment Schedule and Guaranteed Completion Date based on an assumed date of Notice to Proceed for each such Project Section. The pricing for each of Sections B, C and D shall also include proposed price escalation factors. KBR and the Department shall negotiate in good faith all such final terms, which upon final approval by the Department shall be included in the Supplement to the Design-Build Contract for each such Project Section.

Section 4.2 Conditions Precedent to Notices to Proceed for Initial Engineering Work and Section Completion Work.

(a) The Department shall not issue a Notice to Proceed for Initial Engineering Work, and in the case of clause (i) below, KBR shall have no obligation to proceed with the Initial Engineering Work, until:

(i) (A) the Department shall have received written confirmation from the Federal Highway Administration ("FHWA") that (i) FHWA has not classified the Project or any Section thereof as a “Mega Project”, (ii) the Department is not required to submit an initial or any annual financial plans for the Project or any Section thereof pursuant to 23 U.S.C. § 106(h) and the related FHWA Financial Plan Guidance published May 23, 2000; (iii) the Coalfields Expressway has been included in the National Highway System, and (iv) FHWA has indicated its acceptance of the form of the Design-Build Contract in a manner satisfactory to the Department; and

(B) the Department shall have approved the CPM/Payment Schedule for Initial Engineering Work; and

(ii) a Completion Guaranty with respect to the Initial Engineering Work and the Section Completion Work for such Section A substantially in the form of Exhibit E hereto has been executed and delivered by Guarantor.

(b) The Department shall not issue a Notice to Proceed for the Section Completion Work for any of Sections A, B, C or D unless and until the following conditions have been satisfied or waived in writing:

(i) With respect to Section A, KBR shall have delivered to the Department the Baseline Engineering relating to such Project Section conforming to the requirements of the Design-Build Contract and which shall have been approved by the Department and incorporated by reference in the executed Section A Supplement in the form attached hereto as Exhibit D; and with respect to each of
Sections B, C and D, KBR has delivered to the Department the Initial Engineering Work related to such Project Section conforming to the requirements of the Design-Build Contract and which shall have been approved by the Department and incorporated by reference in the Section Supplement for such Project Section.

(ii) The Department and KBR shall have agreed to the Contract Price for Section Completion Work for such Section, a CPM/Payment Schedule and Guaranteed Completion Date (based on an assumed Notice to Proceed date), which shall have been incorporated in an executed Supplement for such Project Section in substantially the form of the Section A Supplement to the Design-Build Contract attached hereto as Exhibit D, and a Completion Guaranty with respect to the Section Completion Work for such Project Section substantially in the form of Exhibit E hereto has been executed and delivered by Guarantor;

(iii) The Department shall have determined in its sole and absolute discretion that sufficient funding is available or reasonably expected to be made available under the approved Plan of Finance for such Project Section, subject to annual appropriations, to pay the cost of Section Completion Work for such Project Section, including all costs and expenses to be incurred by the Department, which determination shall be evidenced by attaching the definitive Plan of Finance as an Attachment to the Section Supplement for such Project Section.

(iv) All Regulatory Approvals, including any supplemental environmental approvals, required to commence construction of such Project Section shall have been received.

(v) All other conditions precedent set forth in Article IV of the Design-Build Contract and the Section Supplement for such Section shall have been satisfied or waived in writing.

Section 4.3 Milestones. The Department and KBR shall cooperate to achieve the following milestones by the dates set forth below:

(a) Section A Milestones.

(i) Completion of the Baseline Engineering for Section A and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by a date which is ten (10) months after the issuance of the Notice to Proceed for Initial Engineering Work;

(ii) (A) the General Assembly shall have adopted legislation reasonably satisfactory to the Department evidencing intent of the General Assembly to make appropriations sufficient to support the Section A Plan of Finance, and (B) CTB shall have taken action to update the Virginia Transportation Development Plan (formerly known as the Six-Year Transportation Improvement Program) allocating funds to the Project as contemplated by the Section A Plan of
Finance by a date which is eleven (11) months after the issuance of the Notice to Proceed for Initial Engineering Work;

(iii) Acceptance by Department of a definitive Plan of Finance for the Section Completion Work for Section A, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available at the time or are reasonably expected to be available the time required by the CPM/Payment Schedule, by a date which is eleven (11) months after the issuance of the Notice to Proceed for Initial Engineering Work; and

(iv) Satisfaction of all other conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2 by a date which is eleven (11) months after the issuance of the Notice to Proceed for Initial Engineering Work.

(b) Section B Milestones.

(i) Completion of the Initial Engineering Work relating such Section by a date which is twenty four (24) months after the issuance of the Notice to Proceed for Initial Engineering Work;

(ii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms, by a date which is twenty five (25) months after the issuance of the Notice to Proceed for Initial Engineering Work;

(iii) Acceptance by Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably expected to be available the time required by the CPM/Payment Schedule, by a date which is thirty (30) months after the issuance of the Notice to Proceed for Initial Engineering Work;

and

(iv) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2 by a date which is thirty (30) months after the issuance of the Notice to Proceed for Initial Engineering Work.

(c) Section C Milestones.

(i) Completion of the Initial Engineering Work relating such Section by a date which is thirty-four (34) months after the issuance of the Notice to Proceed for Initial Engineering Work;

(ii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms, by a
date which is thirty-five (35) months after the issuance of the Notice to Proceed for Initial Engineering Work;

(iii) Acceptance by Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably expected to be available the time required by the CPM/Payment Schedule, by a date which is fifty-four (54) months after the issuance of the Notice to Proceed for Initial Engineering Work;

and

(iv) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2 by a date which is fifty-four (54) months after the issuance of the Notice to Proceed for Initial Engineering Work.

(d) Section D Milestones.

(i) Completion of the Initial Engineering Work relating such Section by a date which is thirty-four (34) months after the issuance of the Notice to Proceed for Initial Engineering Work;

(ii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms, by a date which is thirty-five (35) months after the issuance of the Notice to Proceed for Initial Engineering Work;

(iii) Acceptance by Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably expected to be available the time required by the CPM/Payment Schedule, by a date which is one hundred thirteen (113) months after the issuance of the Notice to Proceed for Initial Engineering Work;

and

(iv) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2 by a date which is one hundred thirteen (113) months after the issuance of the Notice to Proceed for Initial Engineering Work.
ARTICLE V

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ARTICLE VI

FINANCING OF PROJECT

Section 6.1 Section A Plan of Finance.

The preliminary Section A Plan of Finance is set forth in Exhibit F hereto. The estimates of the Section A Section Completion Price and expenses to be incurred by the Department are good faith estimates of the parties based on information available on the Initial Execution Date, but do not represent any agreement on a final Section A Section Completion Price. Prior to the execution of the Section A Supplement, the parties shall agree to a definitive Section A Plan of Finance that will provide sufficient funds available at the times expected to be needed to pay the Section A Section Completion Price in accordance with the CPM/Payment Schedule and all expenses to be incurred by the Department, including Section A Right of Way acquisition costs and contingencies for risks retained by the Department under the Design-Build Contract. Upon execution of the Section A Supplement, the definitive Section A Plan of Finance shall replace the preliminary Plan of Finance and be attached as an Appendix to the Section Supplement.

Section 6.2 Sections B, C and D Plans of Finance.

(a) The Parties recognize that as of the Initial Execution Date, sources of funding for the Section Completion Work for Sections B, C and D have not been identified, and as a result the rights and obligations of KBR to construct such Project Sections are contingent on, among other things, the development and acceptance by Department of a Plan of Finance for each Project Section that provides reasonable assurance that such funding will be available to pay the Section Completion Costs of each such Section in a timely manner. A conceptual Plan of Finance for Sections B, C and D is attached hereto as Exhibit G. The estimates of the Contract Price for the Section Completion Work for each such Section and expenses to be incurred by the Department are good faith estimates of the parties based on information available on the Initial Execution Date, but do not represent any agreement on a Contract Price for Section Completion Work for any such Project Section. During the period between the Initial Execution Date and milestone dates set forth in Section 4.3 hereof for the satisfaction (or waiver in writing) of all conditions precedent to the issuances of the Notice to Proceed for Section Completion Work for such Sections, the parties shall work together to secure additional funding for the Project from federal, state and local governmental sources and private contributions, and to develop a definitive Plan for Finance for each of Sections B, C and D, which may include issuance of debt by third parties. The definitive Plan of Finance for each Section must provide sufficient funds that will be available at the times expected to be needed to pay the Section Completion Work Price (as it may be escalated) in accordance with the CPM/Payment Schedule for such Section and all expenses to be incurred by the Department, including Right of Way acquisition costs and contingencies for risks retained by the Department under the Design-Build Contract. Upon acceptance by the Department of the definitive Plan of Finance for a Section, which shall be in the Department’s sole discretion, the
definitive Plan of Finance will be attached as an Appendix to the Section Supplement for such Project Section.

(b) The Department and KBR acknowledge and agree that either party may initiate at any time discussions of a Plan of Finance for a subsequent Project Section. However, no later than twelve months prior to the milestone dates set forth in Section 4.3(b)(iii), (c)(iii) and (d)(iii), as applicable, Authorized Department Representatives and Authorized KBR Representatives shall begin meeting at reasonable times and intervals to develop a definitive Plan of Finance for such Project Section. The Department and KBR agree to conduct such negotiations in good faith and to use commercially reasonable efforts to reach agreement on a definitive Plan of Finance for each Project Section prior to the applicable milestone dates.

(c) None of the Department, KBR or Guarantor shall have any liability to make an investment in or advance funds to the Project in the event that funds identified in any Plan of Finance are not made available by third parties to pay the costs of the Project.

Section 6.3 Equity Contributions

Each Plan of Finance shall contain a line item entitled “equity contributions” such that, as a condition precedent to Notices to Proceed for Section Completion Work for Sections, B, C and D, and without personal liability to KBR or the Guarantor, KBR will be required to deliver contributions of Right of Way (comprised of mineral or surface estates) and/or local revenues aggregating at least $10 million for the entire Project. The equity contribution line item on the Plan of Finance for Section A may be $0 on the understanding that any equity contribution made with respect to Section A will be credited to the total $10 million requirement. The Department will retain the authority, in its discretion, to approve the amount of the equity contribution line item for each subsequent Project Section as part of the related Plan of Finance, provided that the aggregate amount of the equity contribution for all Project Sections must be at least $10 million. To the extent that any equity contribution requires a transfer of property, the delivery of a deed or binding contract to deliver a deed for a portion of the Right of Way will be accepted by the Department for purposes of satisfying this condition, provided that any such deeds and contracts are in form and substance reasonably satisfactory to the Department.

Section 6.4 Expression of Official Intent

The Department hereby expresses “official intent” within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Code to utilize the proceeds of tax exempt bonds in the estimated maximum principal amounts expected to be issued set forth in the Conceptual Plan of Finance attached hereto as Exhibit G to pay costs of the Project and to use such proceeds to reimburse any such costs incurred prior to issuance of any such bonds.
ARTICLE VII
DESIGN, ACQUISITION AND CONSTRUCTION

Section 7.1. KBR Obligations to Design, Acquire and Construct.

(a) KBR shall design, construct, insure, permit, acquire properties and relocate utilities for the Project, all in accordance with the terms, conditions, standards and schedule set forth in the Design-Build Contract.

(b) KBR shall not commence construction of Section A or any of Sections B, C and D until all conditions precedent thereto, as set forth in the Design-Build Contract and this Agreement, have been satisfied or waived in writing and the Department issues a Notice to Proceed.

Section 7.2. Acquisition by Condemnation.

Pursuant to Article VI of the Design-Build Contract, the Department shall institute eminent domain proceedings to assist KBR in acquiring properties for the Project in accordance with the terms and conditions of Article VI and the other Contract Documents.

Section 7.3 Department Right to Oversee Work.

The Department shall have the right at all times during the Term to oversee the performance of KBR under the Design-Build Contract.
ARTICLE VIII

MAINTENANCE

Section 8.1. Right of First Negotiation.

(a) The Department hereby grants to KBR a right of first negotiation to contract with the Department for maintenance and repair services for the Project Sections that have reached Final Acceptance pursuant to one or more management contracts, if any, to be entered into in accordance with this Section 8.1:

(i) such right of first negotiation shall not apply where the Department seeks to contract for such responsibilities, or to add such responsibilities to an existing contract, for all State highways or for all or substantially all the State highways (including the Project) within the region or district of the Department in which the Project is located;

(ii) if at any time during the term of this Agreement the Department desires to contract with third parties for maintenance and repair of the Project, or any portion thereof, through request for proposals, competitive bids, negotiations or any other lawful procurement process, then the Department shall first deliver to KBR written notice of such fact and the desired scope of work;

(iii) for a period of 90 Days after the delivery of any such notice, the Department and KBR shall engage in good faith negotiations concerning the scope of work, compensation, duration and other terms and conditions for such a contract, without obligation, however, to agree upon any particular terms or conditions;

(iv) if the parties reach agreement upon such terms and conditions, then they shall execute and deliver a binding, written contract which sets forth the definitive agreement of the parties; and

(v) if the parties fail to consummate a definitive agreement within such ninety (90) Day period (or such longer period as may be mutually agreed), KBR shall have no further rights under this Section 8.1 with respect to the scope of work identified by the Department for the negotiations and the Department shall be free to contract with any other party for such work on such terms and conditions as may be acceptable to the Department.

(b) Notwithstanding any provision of Section 8.1(a) to the contrary, so long as any tax-exempt bonds shall have been issued to finance the costs of the Project, or any portion thereof, the Department shall not enter into any maintenance contract with KBR or any third party unless such contract satisfies the requirements for a Qualified Management Contract in the opinion of Bond Counsel.
Section 8.2 Terms of the Maintenance Agreement. Such agreement will contain provisions, consistent with an asset management arrangement, including, without limitation, provisions addressing the following terms:

(a) scope of maintenance services, including routine maintenance and major repair and restoration;

(b) performance standards;

(c) term of the agreement;

(d) compensation for services, including escalation factors;

(e) insurance and bonding;

(f) indemnifications;

(g) records, work, product, software, reporting and audits; and

(h) termination rights, including termination for default or for public convenience.

Section 8.3 KBR Not Otherwise Responsible for Maintenance. Except as provided in the Design-Build Contract (in the case of maintenance during construction and repair or warranty work) or in any maintenance contract entered into with the Department in accordance with Section 8.1, KBR shall have no obligation to repair or maintain the Project or any portion thereof.
ARTICLE IX

CONTRACTING PRACTICES

Section 9.1. Limitation on KBR’s Contracting Powers. Except for (a) this Agreement, (b) the other Project Agreements, and (c) the contracts, subcontracts and agreements expressly permitted under this Agreement or the other Project Agreements (such as but not limited to subcontracts KBR enters into to carry out the Work under the Design-Build Contract) or authorized and directed by the Department, KBR shall have no right or authority to enter into, deliver or perform any contracts or agreements pertaining to the Project which purport to bind the State or the Department or which are contrary to the terms of the Project Agreement without the express prior written consent of the Department. The Department may withhold or condition its consent in its sole and absolute discretion.

Section 9.2. Obligation to Refrain from Discrimination.

(a) KBR covenants and agrees that it shall not discriminate, and it shall require all of its subcontractors 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 connection with the Project, nor shall the KBR 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; provided, however, 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.

(b) KBR shall conduct its activities in connection with the Project in compliance with all other requirements imposed pursuant to Title 2.2, Chapter 42, Sections 4200 et seq., Code of Virginia; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Americans With Disabilities Act of 1990; and applicable rules and regulations including but not limited to provisions of Title 23, Code of Federal Regulations and Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 1 (49 C.F.R. Part 21), which are applicable to the Project by reason of use of federal funds, and as said Regulations may be amended, including the requirements set forth in Appendix 10 to the Design-Build Contract.
ARTICLE X
INDEMNIFICATION AND INSURANCE

Section 10.1. Indemnities.

KBR shall indemnify, protect, defend, hold harmless and release each State Indemnitee from and against any and all losses (other than lost profits), damages (other than incidental or consequential damages), costs and expenses, including reasonable attorneys’ fees, attributable to third party Claims arising out of any negligent act or omission or the recklessness or willful misconduct of KBR or any Related Party with respect to this Agreement, any violation by KBR or any Related Party of Laws, Regulations and Ordinances in connection with or relating to this Agreement, or fraud or intentional misrepresentation by KBR or any Related Party with respect to this Agreement, except to the extent such Claims are attributable to any error or negligent act or omission of any State Indemnitee or any violation by a State Indemnitee of Laws, Regulations and Ordinances in connection with or relating to this Agreement. The defense and indemnification procedures set forth in Section 21.3 of the Design-Build Contract shall apply to Claims for indemnity under this Agreement. Notwithstanding any provision of this Section 10.1 to the contrary, any third party Claim that would be covered by Article 21 of the Design-Build Contract shall be governed by the provisions thereof and KBR shall have no liability therefor under this Section 10.1.

Section 10.2. Responsibilities Regarding Insurance.

KBR shall carry or cause to be carried the insurance policies and satisfy or cause to be satisfied the insurance covenants set forth in the Design-Build Contract.
ARTICLE XI
REPRESENTATIONS, WARRANTIES AND FINDINGS

Section 11.1. Department Representations and Warranties.

The Department hereby represents and warrants to KBR as follows:

(a) The Department is a department of the executive branch of the State and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and other Project Agreements to which the Department is a party.

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

(c) Neither the execution and delivery by the Department of this Agreement and the other Project Agreements executed concurrently herewith to which the Department 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 Department which challenges the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Department is a party, or which challenges the authority of the Department official executing this Agreement or the other Project Agreements, and the Department has disclosed to KBR any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Department is aware.

Section 11.2. KBR Representations and Warranties.

KBR hereby represents and warrants to the Department as follows:

(a) KBR is a duly organized and validly existing corporation created under the laws of the State of Delaware, 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 KBR is a party and to perform each and all of the obligations of KBR provided for herein and therein.

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

(d) Neither the execution and delivery by KBR of this Agreement and the other Project Agreements to which KBR 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 KBR or any other agreements or instruments to which it is a party or by which it is bound.

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

(f) KBR is in material compliance with all Laws, Regulations and Ordinances applicable to KBR or its activities in connection with this Agreement and the other Project Agreements.

Section 11.3. Survival of Representations and Warranties. The representations and warranties of the Department and KBR contained herein shall survive expiration or earlier termination of this Agreement and the other Project Agreements.

Section 11.4. Department's Findings Under PPTA. Department, as the Responsible Public Entity with respect to the Project, makes the following findings:

(a) the actions taken by Department pursuant to the PPTA facilitate the timely acquisition and construction of the Project;

(b) there is a public need for a transportation facility of the type of the Project;

(c) the Project is compatible with the state transportation plan and with local comprehensive plans;

(d) the estimated cost of the Project, as reflected in the preliminary Plan of Finance for Section A, and the Conceptual Plans of Finance for Sections B, C and D, subject to Sections 6.1 and 6.2 hereof, is reasonable in relation to similar facilities;

(e) KBR's plans will result in the timely acquisition and construction of the Project;

(f) the date that the Notice to Proceed with the Initial Engineering Work is given under the Design-Build Contracts shall be the date established for the beginning of construction of the Project as a Qualifying Transportation Facility;
(g) the Project will be owned by the Department as a public road and State highway and will be kept open for use by members of the public from and after the opening date;

(h) the design construction and warranting of the Project serve the public purpose of the PPTA;

(i) the Contract Price for the Initial Engineering Work and the estimated Contract Price for Section Completion Work for each Project Section, reflects a reasonable maximum rate of return on investment for KBR for the purpose of the PPTA;

(j) no user fees are being imposed with respect to the Project by the Project Agreements; and

(k) the terms and conditions of this Agreement serve the public purpose of the PPTA.
ARTICLE XII

TERMINATION

Section 12.1. Termination Upon Expiration of Term. Unless earlier terminated in accordance with the terms of this Article XII, this Agreement, the other Project Agreements and all the rights of KBR hereunder and thereunder shall cease and terminate, without notice or demand from the Department or KBR, on December 31, 2051.

Section 12.2 Termination for Public Convenience.

(a) The Department may at any time when the Department determines in its sole discretion that such action is in the best interests of the State, terminate all of KBR’s rights and obligations under this Agreement and the Design-Build Contract, subject to subsection (b) below; KBR’s rights and obligations in the event of any such termination are as set forth in the Design-Build Contract.

(b) If the Department exercises its right of termination under subsection (a) above, Department shall deliver to KBR a Notice of Termination and thereafter Department and KBR shall comply with the provisions of Article 26 of the Design-Build Contract.

Section 12.3. Termination for Event of Default under Design-Build Contract.

(a) The Department shall have the right to terminate the Design-Build Contract due to an Event of Default by KBR thereunder as set forth in the Design-Build Contract. The Department’s remedies against KBR following any such termination are fully set forth in the Design-Build Contract. Upon any such termination, KBR’s rights under this Agreement and under any maintenance contract entered into pursuant to Article VIII shall automatically terminate unless otherwise agreed to by the Department in writing.

(b) If the Department exercises its right of termination under subsection (a) above, then the Department shall deliver to KBR the termination notice set forth in Section 25.2.2 of the Design-Build Contract and thereafter the Department and KBR shall comply with the termination provisions of said Section 25.2.2.

Section 12.4 Termination Upon Failure to Meet Milestones.

(a) In the event that a Notice to Proceed for Initial Engineering Work has not been issued on or before September 30, 2002, either KBR or the Department may, at its option, terminate this Agreement without any liability to KBR for any costs incurred in connection with this Agreement except the payment referred to in Section 12.6.

(b) In the event that any milestone set forth in Section 4.3 of this Agreement is not met within 6 months after the milestone date set forth in such Section (as
such date may be extended by an event of force majeure for a period not in excess of 24
months or by mutual agreement of the parties), either KBR or the Department may, at its
option, terminate this Agreement in writing with respect to the affected Section. For
purposes of this Section 12.4, the term “force majeure” means any event that is beyond
the control of KBR and which is noticed to Department in writing.

Section 12.5. Termination Upon Fulfillment of Obligations.

At any time after Final Acceptance of all Sections of the Project so long as KBR
has no remaining obligations to the Department with respect to the Project under the
Design Build Contract or any management contract entered into pursuant to Article VIII
hereof, either KBR or the Department may, at its option, upon 45 Days prior written
notice, terminate this Agreement.

Section 12.6. KBR Actions Upon Termination. On the effective date of
termination of this Agreement or KBR's rights under this Agreement, KBR shall deliver
or shall have delivered to the Department all Work Product of KBR and if such
termination occurs prior to the issuance of the Notice to Proceed for Initial Engineering
Work, the Department shall pay to KBR an amount equal to the fair value to the
Department of the Work Product delivered or previously delivered to the Department by
KBR.

Section 12.7. Liability After Termination.

(a) In the event this Agreement or any other Project Agreement is
terminated by reason of a material default, such termination shall not excuse the defaulting
party from any liability arising out of such default as provided in the Project Agreements.

(b) In the event this Agreement or any other Project Agreement is
terminated by 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.

(c) In the event that bonds are issued to finance Section Completion Work
of any Project Section, prior to the issuance of any such bonds, this Section 12.7 shall be
amended to provide bondholders’ rights customary for financings of this nature, reasonably
acceptable to the Department.

Section 12.8. Exclusive Termination Remedies.

This Article XII, together with the express provisions on termination set forth
the Design-Build Contract and any management contract entered into pursuant to Article
VIII hereof set forth the entire and exclusive provisions and rights of the Department and
KBR regarding termination of 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.
ARTICLE XIII
DEFAULTS AND REMEDIES

Section 13.1. KBR Defaults. Each of the following events shall constitute a KBR Default under this Agreement:

(a) KBR shall fail to timely observe or perform or cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by KBR under this Agreement (provided that if the same is also required of KBR under the Design-Build Contract, then subsection (f) below shall apply in lieu of this subsection (a));

(b) any representation or warranty made by KBR, or by Guarantor herein or in any other Project Agreement shall be inaccurate or misleading in any respect on the date made or deemed made and a material adverse effect upon the Project or Department's rights or obligations under the Project Agreements results therefrom;

(c) KBR shall fail to execute and deliver, or fail to cause Guarantor to execute and deliver, any Project Agreement as and when required under this Agreement;

(d) KBR shall commence a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; shall seek the appointment of a trustee, receiver, liquidator, custodian or other similar official of KBR or any substantial part of KBR's assets; shall file an answer admitting the material allegations of a petition filed against KBR in any involuntary case commenced against KBR; shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case commenced against KBR; shall make an assignment for the benefit of creditors; shall fail, be unable, or admit in writing the inability generally to pay KBR's debts as they become due; or shall take any action to authorize any of the foregoing, or any of the foregoing acts or events shall occur with respect to Guarantor (but not necessarily in the same proceeding or concurrently);

(e) an involuntary case shall be commenced against KBR seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to KBR or KBR's debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of KBR or any substantial part of KBR's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by KBR in good faith or shall remain undismissed and unstayed for a period of 90 Days, or any such involuntary case or cases shall be commenced against Guarantor (but not necessarily in the same proceeding or concurrently) and such case or cases shall not be contested by Guarantor in good faith or shall remain undismissed and unstayed for a period of 90 Days; or

(f) any Event of Default by KBR under the Design-Build Contract.
Section 13.2. KBR Cure Periods. KBR shall have the following cure periods with respect to the following KBR Defaults:

(a) respecting an KBR Default under Section 13.1(a), (b) or (c), a period of 15 Days after KBR receives written notice of the KBR Default, provided that if the KBR Default is under Section 13(a) or (b) and is of such a nature that the cure cannot with diligence be completed within such time period and KBR has commenced meaningful steps to cure immediately after receiving the default notice, then KBR shall have such additional period of time, up to a maximum cure period of 180 Days, as is reasonably necessary to diligently effect cure;

(b) respecting an KBR Default under Section 13.1(d) or (e), no cure period; and

(c) respecting an KBR Default under Section 13.1(f), the cure period, if any, set forth in the Design-Build Contract.

Section 13.3. Department Remedies for KBR Default. Upon the occurrence of an KBR Default and expiration, without full cure, of any applicable cure period, the Department may exercise any one or more of the following remedies as the Department in its sole and absolute discretion shall determine:

(a) in the event of an KBR Default under Section 13.1(a), (b), (c), (d) or (e), any and all remedies available at law or in equity, including but not limited to recovery of damages to the extent provided by law; provided that in no event shall KBR be liable for, and Department waives all Claims for indirect, incidental or consequential damages of any nature, whether in contract, tort (including negligence) or other legal theory, unless arising out of the fraud or intentional misrepresentation of KBR or any of its members, managers, partners, directors, officers, employees or agents;

(b) in the event of an KBR Default under Section 13.1(f), any applicable remedies set forth in the Design-Build Contract; and

(c) the Department may offset any sums the Department owes to KBR by any sums owing to the Department from KBR, including but not limited to Liquidated Damages or other undisputed or finally adjudicated monetary damages owing Department under the Design-Build Contract.

Section 13.4. Department Defaults.

(a) Each of the following events shall constitute a Department Default under this Agreement:

(i) the Department shall fail to observe or perform any covenant, agreement, term or condition required to be observed or performed by the Department under this Agreement;
(ii) any representation or warranty made by the Department herein or in any other Project Agreement shall be inaccurate or misleading in any respect on the date made and a material adverse effect upon the Project or KBR's rights or obligations under the Project Agreements results therefrom;

(iii) an event of default by the Department occurs under any other Project Agreement; or

(iv) the Virginia General Assembly shall enact legislation which (A) the State intends to impact, and does impact, only KBR, this Agreement, the Project or the class of agreements or transportation facilities established pursuant to the PPTA encompassing the Project; and (B) materially impairs KBR's rights under this Agreement to plan, develop, arrange the financing of, construct and maintain (under any then-existing maintenance contract entered into pursuant to Article VIII) the Project all as provided for in this Agreement and the other Project Agreements.

(b) Except as set forth in subsection (a)(iv) above, KBR acknowledges that no act or omission of any federal, State, regional or local government or agency thereof, other than the Department, shall constitute a Department Default hereunder.

Section 13.5. Department Cure Periods. The Department shall have the following cure periods with respect to the following Department Defaults:

(a) respecting a Department Default under Section 13.4(a)(i) or (ii), a period of 30 Days after the Department receives written notice of the Department Default, provided that if the Department Default is of such a nature that the cure cannot with diligence be completed within such time period and the Department has commenced meaningful steps to cure immediately after receiving the default notice, the Department shall have such additional period of time, up to a maximum cure period of 180 Days, as is reasonably necessary to diligently effect cure;

(b) respecting a Department Default under Section 13.4(a)(iii), the cure period, if any, set forth in the relevant Project Agreement; and

(c) respecting a Department Default under Section 13.4(a)(iv), a period of 180 Days after the date the subject legislation becomes law; provided that, if the effectiveness of such legislation is stayed by a court of law, the running of such 180 day cure period shall be suspended for the duration of any such stay.

Section 13.6. KBR Remedies.

(a) Except as otherwise provided herein, upon the occurrence of a Department Default and expiration, without full cure, of any cure period available respecting such Department Default, KBR may exercise any rights and remedies available to KBR under this Agreement or the other Project Agreements or as are otherwise available to KBR at law; provided, however:
(i) KBR shall have no right to seek or obtain equitable relief against the Department arising out of a Department Default except (A) writ of mandamus to the extent available, (B) equitable remedies regarding monetary compensation (such as relief in quantum meruit) and (C) equitable remedies available in the case of a Department Default resulting from action by the Department which is outside the Department’s legal authority;

(ii) KBR shall not be entitled, and waives all right, to recover indirect, incidental or consequential damages, and lost profits, whether such damages arise in contract, tort or other legal theory, and irrespective of fault, negligence or strict liability, except and only to the extent provided otherwise in subsection (b) below.

(iii) Department's obligations and liabilities are strictly limited to those set forth in the Project Agreements, and KBR shall not have and may not assert, and waives, any Claim against Department based on any supposed or alleged duties arising in tort; and

(iv) notwithstanding anything herein to the contrary, the recovery of Claims against the State shall be subject to all Laws, Regulations and Ordinances, including without limitation, Title 8.01, Chapter 3, Article 18 (commencing at Section 8.01-192) and Article 18.1 (commencing at Section 8.01-195.1), Code of Virginia.

(b) The Department's payment of any monetary damages or other compensation or award under subsection (a) above shall be conditioned upon express legislative authorization and appropriation of the payment to KBR of such damages, compensation or award.

(c) Promptly after any final judgment is rendered by a court of competent jurisdiction or arbitrator awarding compensation or damages to KBR and all appeal rights are exhausted, the Department shall institute payment procedures as set forth in Title 8.01, Section 195, Code of Virginia.

(d) If KBR has not received the full amount of any outstanding monetary damages or other compensation or award owing to KBR under subsection (a) above within 24 months after the same became payable, the Department shall (i) use diligent efforts to obtain from the Virginia General Assembly an appropriation sufficient to make such payment, and (ii) include such payment amount in its annual budget request, for five legislative sessions, if necessary, and diligently seek an appropriation to make such payment.

Section 13.7. Dispute Resolution; No Declaratory Judgment Procedure.

(a) All disputes between Department and KBR arising under or relating to the Design-Build Contract (or arising out of or relating to obligations under this Agreement which are duplicative of obligations under the Design-Build Contract) shall be resolved in accordance with the dispute resolution provisions set forth in the Design-Build Contract.
(b) Any dispute which may arise between the Department and KBR, other than disputes described in subsection (a) above, shall be mutually resolved through best efforts and good faith negotiations between the Authorized Department Representatives and Authorized KBR Representatives. In conducting such negotiations, the Department and KBR recognize that in drafting this Agreement, it is impracticable to make provisions for every contingency that may arise during its term. Accordingly, in order to achieve the resolution of any dispute concerning matters for which the Agreement provides no clear guidance, the Department and KBR concur in the principle that this Agreement is intended to operate between them in fairness. If, despite best efforts and good faith negotiations and the application of the principle of fairness in the claims set forth above, the dispute is not resolved to the mutual satisfaction of both parties within thirty Days after written notification by one party to the other of a problem or claim arising that remains in dispute, or such longer time as is mutually agreed, then such dispute shall first be submitted administratively as set forth below.

(i) KBR shall submit to the Department a written claim, an original and three legible copies, that shall set for the facts upon which the claim is based. KBR shall include all pertinent data and correspondence that may substantiate the claim. Within 90 Days from the receipt of the claim, the Department will make an investigation and notify KBR by registered mail of its decision. However, by mutual agreement, the Department and KBR may extend the 90 day period for another 30 Days.

(ii) If KBR is dissatisfied with the decision, they shall notify Commissioner in writing, within 30 Days from the receipt of the Department’s decision, that it desires to appear before him, whether in person or through counsel, and present additional facts and argument in support of this claim. The Commissioner will schedule and meet with KBR within 30 Days after receiving the request. However, the Commissioner and KBR, by mutual agreement, may schedule the meeting to be held after 30 Days but before the 60th day from the receipt of KBR’s written request. Within 45 Days from the date of the meeting, the Commissioner will investigate the claim, including the additional facts presented, and notify KBR in writing of his decision. However, the Commissioner and KBR, by mutual agreement, may extend the 45-day period for another 30 Days. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with KBR subject to the provision of Section 2.2-514 of the Code of Virginia 1950 as amended.

(iii) If KBR is dissatisfied with the decision of the Commissioner may institute a civil action as to such portion of the claim as is denied by the Commissioner pursuant to Section 33.1-387 of the Code of Virginia.

(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.

(e) As permitted by Section 56-568 of the PPTA, the parties agree that any requirement that the State Corporation Commission issue a declaratory judgment regarding a material default (as defined in Section 56-565 of the PPTA) pursuant to such Section 56-568, as a prerequisite to exercising any remedy set forth in this Agreement, any other Project Agreements or such Section 56-568, shall not apply to this Agreement or any other Project Agreement.
ARTICLE XIV

RECORDS, REPORTS AND WORK PRODUCT

Section 14.1. Maintenance of Records. KBR shall file and maintain books, records, documents and information as provided in the Design-Build Contract.


(a) Any Work Product the Department owns pursuant to the Design-Build Contract or otherwise, and any document of which the Department obtains a copy, may be considered public records under the Virginia Public Records Act, Section 42.1-76 through 42.1-91, Code of Virginia or official records under the Virginia Freedom of Information Act, Section 2.2-3700 through 2.2-3714 of the Code of Virginia, and as such may be subject to public disclosure. The Department recognizes that certain Work Product the Department owns pursuant to the Design-Build Contract and certain documents of which the Department obtains a copy may contain information exempt from disclosure under Section 2.2-3705, Code of Virginia, may constitute trade secrets as defined in Section 59.1-336, Code of Virginia, and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Should such records become the subject of a request for public disclosure, the Department shall respond as follows:

(i) The Department shall use reasonable efforts to immediately notify KBR of such request and the date by which it anticipates responding.

(ii) KBR must then assert in writing to the Department any claim that such records contain proprietary information that is exempt from disclosure under Section 2.2-3705, Code of Virginia, or is subject to protection pursuant to Section 59.1-339, Code of Virginia, or other State law so that the Department may consider such assertion in responding to the requester.

(iii) If KBR fails to make such assertion within three Business Days after the date the Department notifies KBR of its intended response, the Department shall have the right to make such disclosure.

(iv) If KBR makes a timely assertion that the requested records contain proprietary information, trade secrets or confidential information, and thus are exempt from disclosure or otherwise protected under state law, upon consultation with KBR to agree upon a reasonable effort and legal cost, at KBR’s expense, the Department and KBR shall seek judicial declaration of the rights of the parties. Until such declaration is made, the Department will maintain the confidentiality of such records.

(v) In no event shall the Department be liable to KBR as a result of any disclosure of such records by the Department pursuant to this Section 14.2.
(vi) If the Department's denial of a request for disclosure of records is challenged in court and the Department agrees to a request by the KBR to defend its position, KBR shall assist the Department in its defense and shall indemnify the Department and any State Indemnitee for any and all damages assessed and costs (including the fees and costs of the Department's attorneys) the Department incurs in such defense, including any attorneys' fees lawfully assessed against the Department or any State Indemnitee.

(b) If KBR believes that any Work Product or any document subject to transmittal to or review by the Department under the terms of this Agreement or any other Project Agreement contains proprietary or confidential information or trade secrets that are exempt or protected from disclosure pursuant to State law, KBR shall use its best efforts to identify such information prior to such transmittal or review and it and the Department shall confer on appropriate means of ensuring compliance with applicable laws prior to transmittal or review. Upon the written request of either party, KBR and the Department shall mutually develop a protocol for the transmittal, review and disclosure of Work Product or other documents produced or obtained by KBR so as to avoid violations of any applicable law.

Section 14.3. Reporting Requirements and Inspection and Audit Rights.

(a) KBR shall deliver to the Department financial and narrative reports, statements, certifications, budgets and information as and when required under the Design-Build Contract and the PPTA. So long as KBR is a subsidiary of the Guarantor, KBR may satisfy its financial reporting obligations under the PPTA by furnishing or making available on the internet or by similar electronic means to the Department (with a hard copy or CD-ROM version to the Department upon request):

(i) as soon as available and in any event within 120 days after the end of each fiscal year of the Guarantor, the audited financial statements for such year of the Guarantor and its subsidiaries prepared on a consolidated basis; and

(ii) promptly after the sending or filing thereof, copies of any periodic reports on Forms 10-K, 10-Q and 8-K (or any successor forms adopted by the Securities Exchange Commission) which the Guarantor files with the Securities Exchange Commission.

(b) The Department shall have audit rights respecting KBR as set forth in Section 12.1 of the Design-Build Contract.

(c) Nothing contained in this Agreement or any other Project Agreement shall in any way limit the constitutional and statutory powers, duties and rights of elected state officials, including the independent rights of the State Auditor of Public Accounts, in carrying out his or her legal authority.
Section 14.4 Press Releases

KBR shall not issue any press release or other public communication regarding this Agreement or the Design-Build Contract prior to the issuance of the Notice to Proceed for Initial Engineering Work without the Department’s prior written consent, except as may be required by state or federal securities laws.
ARTICLE XV

RESERVED RIGHTS

Section 15.1. Exclusions from KBR's Interests. KBR's rights and interests in the Project and Project Right of Way shall be specifically limited only to such rights and interests which are created in favor of KBR in the Project Agreements and reasonably necessary and required for Project Purposes. All other rights with respect to the Project, including, without limitation, all ownership, development, maintenance, repair, replacement, operation, use and enjoyment of, and access to, the Project are reserved to the Department.
ARTICLE XVI
MISCELLANEOUS

Section 16.1. Assignment.

(a) Except as otherwise permitted in accordance with subsections (b), (c) and (d), below, KBR may not, without the prior written consent of the Department, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement or the other Project Agreements.

(b) KBR may assign or transfer, without the prior written consent of the Department, its rights and interests under this Agreement and the other Project Agreements in connection with any merger or consolidation of KBR with or into any other Person, or any sale, transfer or other disposition of all or substantially all of the assets of KBR, whether in a single transaction or a series of transactions, provided that KBR, or the corporation formed by such consolidation or with or into which KBR is merged or the Person which acquires all or substantially all of the assets of KBR (such corporation or person being the “Successor Entity”), shall deliver or cause to be delivered to the Department, unless KBR is the surviving entity or KBR’s obligations are assumed by the Successor Entity by operation of law, an agreement containing an assumption by the Successor Entity of KBR’s obligations under this Agreement and the other Project Agreements, within 60 days after the consummation of this transaction and provided that the obligations of the Successor Entity under the Design-Build Contract continue to be secured by the Completion Guaranty.

(c) KBR may assign or transfer, without the prior written consent of the Department, its rights and interests under this Agreement and the other Project Agreements to any Related Party of KBR so long as the Completion Guaranty remains in full force and effect.

(d) If and to the extent required, in the opinion of Bond Counsel, for the delivery of tax opinions in connection with any tax-exempt bonds issued in connection with the plan of finance for the Project approved by the Department and as contemplated by Article VI, KBR may transfer, without the prior written consent of the Department, all or any portion of its rights and obligations under this Agreement to the Virginia Coalfield Coalition Authority, created under Chapter 14 of Title 33.1 of the Virginia Code or to any non-profit corporation approved by the Department in its reasonable discretion. Upon any such transfer, KBR shall have no further interest in this Agreement as to the rights and obligations so transferred, but KBR shall remain liable to the Department under this Agreement with respect to obligations prior to the date of transfer and under the Design-Build Contract and any Qualified Management Contract to which it may be a party.

(e) The Department may transfer and assign its interests in the Project, this Agreement and any other Project Agreements to any other public agency or public entity as permitted by law, provided that the successor or assignee has assumed all of the Department's obligations, duties and liabilities under this Agreement and the Project Agreements then in effect, and has provided KBR with reasonable assurance of its legal
and financial authority to honor and perform the same. To the extent that KBR assigns its interests in this Agreement to any non-profit corporation pursuant to Section 16.1(c), the Department shall comply with limitations on conveyance of its interest in the Project set forth in Section 3.04, subsection 1(c), of Revenue Procedure 82-26, if and to the extent applicable.

(f) If either party changes its name, such party agrees to promptly furnish the other party with written notice of change of name and appropriate supporting documentation.

Section 16.2. No Gift or Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Project, Project Right of Way or Work Product to the Department or the general public or for any public use or purpose whatsoever, or be deemed to create any rights in the Project, Project Right of Way or Work Product except as expressly set forth herein.

Section 16.3. 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:

(i) personally,

(ii) by independent, reputable, overnight commercial courier,

(iii) by facsimile transmission:

(A) 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),

(B) 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

(C) where the facsimile transmission is immediately followed by service of the original of the subject item in the manner provided in subsections (a)(i), (ii) or (iv) hereof, or

(iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:
(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 in Virginia 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 U.S. 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 16.4. Binding Effect. Subject to the limitations of Section 16.1, 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 16.5. Relationship of Parties.

(a) The relationship of KBR to the Department shall be one of an independent contractor, not an agent, partner, joint venturer or employee, and the Department shall have no rights to direct or control the activities of KBR or any KBR Party.

(b) Officials, employees and agents of the Department shall in no event be considered employees, agents, partners or representatives of KBR.

Section 16.6. 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.

Section 16.7. 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 16.8. No Brokers. Each party represents and warrants that it has not dealt with any real estate or business opportunity broker or agent or any finder in connection with this Agreement. Each party agrees to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate or business opportunity broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

Section 16.9. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State applicable to contracts executed and to be performed within the State. Venue for any legal action arising out of this Agreement shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

Section 16.10. Use of Police Power. Nothing in this Agreement limits the authority of the Department to exercise its regulatory and police powers granted by law, including but not limited to its powers of condemnation with respect to all or any part of the Project, the Project Right of Way and any of KBR's rights hereunder. The parties waive any requirement by the State Corporation Commission to issue a declaratory judgment regarding condemnation pursuant to Title 56, Chapter 22, Section 56-568, Code of Virginia.

Section 16.11. 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 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 16.12. Subpoena. Except as provided for in Virginia Code Section 33.1-4, KBR may subpoena any Department personnel provided that KBR shall pay for such personnel's time at its fully burdened rate (including overhead and fringe benefits), together with all out-of-pocket expenses incurred, no later than 30 Days after KBR's receipt of an invoice reasonably documenting the amount of such time provided.

Section 16.13. 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 the party preparing it, 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, sections and subsections 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. 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. All references to a subsection "above" or "below" refer to the denoted subsection within the Section in which the reference appears.

(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.
This Agreement, its exhibits and the other Project Agreements are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent.

Section 16.14. Counterparts. 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 16.15. Entire Agreement; Amendment.

(a) THIS AGREEMENT AND THE OTHER PROJECT AGREEMENTS (INCLUDING THE EXHIBITS HERETO AND THERETO) CONSTITUTE THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN AND THEREIN. ALL PRIOR OR CONTEMPORANEOUS VERBAL OR WRITTEN 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 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.

(b) This Agreement and the other Project Agreements attempt to set forth in full all requirements applicable under the PPTA as to the study, planning, design, acquisition, development, construction, operation, maintenance, repair, management and financing of the Project and attempt to define in full the rights and responsibilities of each party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Agreement and the other Project Agreements, the parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the PPTA, recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

(c) If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.

Signatures On Next Page
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
a department of the Commonwealth of Virginia

By: ________________________________
    Commonwealth Transportation Commissioner

KELLOGG BROWN & ROOT, INC.,
a Delaware corporation

By: ________________________________
    Vice President
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE I  RECITALS</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE II  DEFINITIONs</td>
<td>4</td>
</tr>
<tr>
<td>ARTICLE III  ESTABLISHMENT of PUBLIC-PRIVATE TRANSACTION</td>
<td>5</td>
</tr>
<tr>
<td>Section 3.1. Basic Agreement</td>
<td>5</td>
</tr>
<tr>
<td>Section 3.2. Parties to Transaction; Roles and Responsibilities</td>
<td>5</td>
</tr>
<tr>
<td>Section 3.3. Project Agreements</td>
<td>7</td>
</tr>
<tr>
<td>Section 3.4. Nature of Parties’ Interests Under Certain Project Agreements</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.5. Development Fee</td>
<td>9</td>
</tr>
<tr>
<td>ARTICLE IV  INITIAL ENGINEERING WORK AND SECTION COMPLETION WORK</td>
<td>10</td>
</tr>
<tr>
<td>Section 4.1 Pricing of Section Completion Work</td>
<td>10</td>
</tr>
<tr>
<td>Section 4.2 Conditions Precedent to Notices to Proceed for Initial Engineering Work and Section Completion Work</td>
<td>10</td>
</tr>
<tr>
<td>Section 4.3 Milestones</td>
<td>11</td>
</tr>
<tr>
<td>ARTICLE V  NOT USED</td>
<td>14</td>
</tr>
<tr>
<td>ARTICLE VI  FINANCING OF PROJECT</td>
<td>15</td>
</tr>
<tr>
<td>Section 6.1 Section A Plan of Finance</td>
<td>15</td>
</tr>
<tr>
<td>Section 6.2 Sections B, C and D Plans of Finance</td>
<td>15</td>
</tr>
<tr>
<td>Section 6.3 Equity Contributions</td>
<td>16</td>
</tr>
<tr>
<td>Section 6.4 Expression of Official Intent</td>
<td>16</td>
</tr>
<tr>
<td>ARTICLE VII  DESIGN, ACQUISITION AND CONSTRUCTION</td>
<td>17</td>
</tr>
<tr>
<td>Section 7.1. KBR Obligations to Design, Acquire and Construct</td>
<td>17</td>
</tr>
<tr>
<td>Section 7.2. Acquisition by Condemnation</td>
<td>17</td>
</tr>
<tr>
<td>Section 7.3 Department Right to Oversee Work</td>
<td>17</td>
</tr>
<tr>
<td>ARTICLE VIII  MAINTENANCE</td>
<td>18</td>
</tr>
<tr>
<td>Section 8.1. Right of First Negotiation</td>
<td>18</td>
</tr>
<tr>
<td>Section 8.2 Terms of the Maintenance Agreement</td>
<td>19</td>
</tr>
<tr>
<td>Section 8.3 KBR Not Otherwise Responsible for Maintenance</td>
<td>19</td>
</tr>
<tr>
<td>ARTICLE IX  CONTRACTING PRACTICES</td>
<td>20</td>
</tr>
<tr>
<td>Section 9.1. Limitation on KBR’s Contracting Powers</td>
<td>20</td>
</tr>
<tr>
<td>Section 9.2. Obligation to Refrain from Discrimination</td>
<td>20</td>
</tr>
<tr>
<td>ARTICLE X  INDEMNIFICATION AND INSURANCE</td>
<td>21</td>
</tr>
<tr>
<td>Section 10.1. Indemnities</td>
<td>21</td>
</tr>
<tr>
<td>Section 10.2. Responsibilities Regarding Insurance</td>
<td>21</td>
</tr>
<tr>
<td>ARTICLE XI REPRESENTATIONS, WARRANTIES and findings</td>
<td>22</td>
</tr>
<tr>
<td>Section 11.1. Department Representations and Warranties</td>
<td>22</td>
</tr>
</tbody>
</table>
ARTICLE XII TERMINATION................................................................. 25

Section 12.1. Termination Upon Expiration of Term. .......................... 25
Section 12.2. Termination for Public Convenience. ............................ 25
Section 12.3. Termination for Event of Default under Design-Build Contract ........................................................................... 25
Section 12.4. Termination Upon Failure to Meet Milestones ................. 25
Section 12.5. Termination Upon Fulfillment of Obligations ................ 26
Section 12.6. KBR Actions Upon Termination .................................... 26
Section 12.7. Liability After Termination ........................................... 26

ARTICLE XIII DEFAULTS AND REMEDIES........................................ 28

Section 13.1. KBR Defaults. ................................................................. 28
Section 13.2. KBR Cure Periods. .......................................................... 29
Section 13.3. Department Remedies for KBR Default ......................... 29
Section 13.4. Department Defaults. ..................................................... 29
Section 13.5. Department Cure Periods. ............................................. 30
Section 13.6. KBR Remedies ................................................................ 30
Section 13.7. Dispute Resolution; No Declaratory Judgment Procedure ...................................................................................... 31

ARTICLE XIV RECORDS, REPORTS AND WORK PRODUCT ............... 34

Section 14.1. Maintenance of Records. .............................................. 34
Section 14.2. Public Records. ............................................................... 34
Section 14.3. Reporting Requirements and Inspection and Audit Rights ..................................................................................... 35
Section 14.4. Press Releases ................................................................. 36

ARTICLE XV RESERVED RIGHTS ..................................................... 37

Section 15.1. Exclusions from KBR’s Interests ..................................... 37

ARTICLE XVI MISCELLANEOUS ....................................................... 38

Section 16.1. Assignment .................................................................. 38
Section 16.2. No Gift or Dedication. .................................................... 39
Section 16.3. Notices ........................................................................ 39
Section 16.4. Binding Effect ................................................................. 41
Section 16.5. Relationship of Parties .................................................. 41
Section 16.6. No Third Party Beneficiaries ....................................... 41
Section 16.7. Waiver ........................................................................ 41
Section 16.8. No Brokers. ................................................................. 42
Section 16.9. Governing Law and Venue .......................................... 42
Section 16.10. Use of Police Power. .................................................... 42
Section 16.11. Survival ..................................................................... 42
Section 16.12. Subpoena ................................................................. 42
Section 16.13. Construction and Interpretation of Agreement .......... 42
Section 16.14. Counterparts .............................................................. 44
Section 16.15. Entire Agreement; Amendment .................................... 44
LIST OF EXHIBITS

I. Exhibits:

A. Definitions
B. Description of the Project Sections
C. Form of Design-Build Contract
D. Form of Section Supplement
E. Form of Completion Guaranty
F. Section A Preliminary Plan of Finance
G. Sections B, C and D Conceptual Plan of Finance
Comprehensive Agreement
to Develop and Maintain
Coalfields Expressway

Dated as of January 11, 2002

by and between

VIRGINIA DEPARTMENT OF TRANSPORTATION,
a Department of the Commonwealth of Virginia

and

KELLOGG BROWN & ROOT, INC.
a Delaware corporation
EXHIBIT A

DEFINITIONS
EXHIBIT B

DESCRIPTION OF PROJECT AND PROJECT SECTIONS

See Project Scope, Appendix 6 to Design-Build Contract.
EXHIBIT C

DESIGN-BUILD CONTRACT

EXHIBIT D
FORM OF SECTION A SUPPLEMENT
EXHIBIT E

FORM OF COMPLETION GUARANTY

EXHIBIT F

SECTION A PRELIMINARY PLAN OF FINANCE
EXHIBIT G

SECTIONS B, C AND D CONCEPTUAL PLAN OF FINANCE
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See Appendix 1 for definitions
DESIGN-BUILD CONTRACT

Coalfields Expressway

Dated as of January 11, 2002

by and between

VIRGINIA DEPARTMENT OF TRANSPORTATION,  
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and

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## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DEFINITIONS; CONTRACT DOCUMENTS; ACCEPTANCE OF PROJECT SITE</td>
<td>2</td>
</tr>
<tr>
<td>1.1</td>
<td>Certain Definitions</td>
<td>2</td>
</tr>
<tr>
<td>1.2</td>
<td>Recitals</td>
<td>2</td>
</tr>
<tr>
<td>1.3</td>
<td>Contract Documents</td>
<td>2</td>
</tr>
<tr>
<td>1.4</td>
<td>Order of Precedence</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>CONTRACTOR’S DESIGN, PROCUREMENT AND CONSTRUCTION RESPONSIBILITIES</td>
<td>4</td>
</tr>
<tr>
<td>2.1</td>
<td>Design and Construction</td>
<td>4</td>
</tr>
<tr>
<td>2.2</td>
<td>Contractor Obligations</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>PLANS AND SPECIFICATIONS</td>
<td>6</td>
</tr>
<tr>
<td>3.1</td>
<td>Commencement of Design Work</td>
<td>6</td>
</tr>
<tr>
<td>3.2</td>
<td>In-Progress Review</td>
<td>6</td>
</tr>
<tr>
<td>3.3</td>
<td>Design Approval</td>
<td>6</td>
</tr>
<tr>
<td>3.4</td>
<td>Review Deadlines</td>
<td>7</td>
</tr>
<tr>
<td>3.5</td>
<td>Status of Design at Commencement of Work</td>
<td>7</td>
</tr>
<tr>
<td>3.6</td>
<td>Initial Engineering Work</td>
<td>7</td>
</tr>
<tr>
<td>3.7</td>
<td>Exceptions and Deviations from Department Standards</td>
<td>7</td>
</tr>
<tr>
<td>3.8</td>
<td>Limitations on Contractor’s Right to Rely</td>
<td>8</td>
</tr>
<tr>
<td>4</td>
<td>CONSTRUCTION WORK</td>
<td>10</td>
</tr>
<tr>
<td>4.1</td>
<td>Conditions Precedent to Commencement of Construction Work</td>
<td>10</td>
</tr>
<tr>
<td>4.2</td>
<td>Conditions Precedent to Construction of Portion of a Project Section</td>
<td>10</td>
</tr>
<tr>
<td>4.3</td>
<td>Conditions Precedent for Department’s Benefit</td>
<td>11</td>
</tr>
<tr>
<td>5</td>
<td>PROJECT MANAGEMENT</td>
<td>12</td>
</tr>
<tr>
<td>5.1</td>
<td>Supervision and Construction Procedures</td>
<td>12</td>
</tr>
<tr>
<td>5.1.1</td>
<td>Responsibility</td>
<td>12</td>
</tr>
<tr>
<td>5.1.2</td>
<td>Safety Program</td>
<td>12</td>
</tr>
<tr>
<td>5.1.3</td>
<td>Security</td>
<td>12</td>
</tr>
<tr>
<td>5.1.4</td>
<td>Adjoining Property</td>
<td>12</td>
</tr>
<tr>
<td>5.1.5</td>
<td>Differing Site Conditions</td>
<td>12</td>
</tr>
<tr>
<td>5.2</td>
<td>Department Oversight</td>
<td>13</td>
</tr>
<tr>
<td>5.2.1</td>
<td>Effect of Reviews, Inspections, Tests and Approvals</td>
<td>13</td>
</tr>
<tr>
<td>5.2.2</td>
<td>Inspection and Testing</td>
<td>13</td>
</tr>
<tr>
<td>6</td>
<td>PROJECT RIGHT OF WAY ACQUISITION</td>
<td>15</td>
</tr>
<tr>
<td>6.1</td>
<td>Project Right of Way Acquisition Requirements</td>
<td>15</td>
</tr>
<tr>
<td>6.2</td>
<td>Right of Way Acquisition Plan and Right of Way Plans</td>
<td>16</td>
</tr>
<tr>
<td>6.3</td>
<td>Acquisition by Condemnation</td>
<td>16</td>
</tr>
<tr>
<td>6.4</td>
<td>Acquisitions by Negotiation and Conveyances to Department</td>
<td>17</td>
</tr>
<tr>
<td>6.5</td>
<td>Hazardous Substance Investigations and Remediation</td>
<td>18</td>
</tr>
<tr>
<td>6.6</td>
<td>Acquisition Costs</td>
<td>20</td>
</tr>
<tr>
<td>6.7</td>
<td>Changes in Project Right of Way Limits</td>
<td>20</td>
</tr>
<tr>
<td>6.8</td>
<td>Residue Parcels</td>
<td>20</td>
</tr>
<tr>
<td>6.9</td>
<td>Record Documents</td>
<td>20</td>
</tr>
<tr>
<td>7</td>
<td>UTILITIES</td>
<td>21</td>
</tr>
<tr>
<td>7.1</td>
<td>Commencement of Utility Work</td>
<td>21</td>
</tr>
<tr>
<td>7.2</td>
<td>Contractor’s Utility Relocations Obligations</td>
<td>21</td>
</tr>
</tbody>
</table>
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.3</td>
<td>Payment for Utility Relocation</td>
<td>22</td>
</tr>
<tr>
<td>7.4</td>
<td>Obligations of Department</td>
<td>22</td>
</tr>
<tr>
<td>8</td>
<td>Pricing Documents</td>
<td>23</td>
</tr>
<tr>
<td>8.1</td>
<td>Definition</td>
<td>23</td>
</tr>
<tr>
<td>8.2</td>
<td>Exclusions from Pricing Documents</td>
<td>23</td>
</tr>
<tr>
<td>8.3</td>
<td>Format of Pricing Document</td>
<td>23</td>
</tr>
<tr>
<td>8.4</td>
<td>Delivery of Pricing Documents into Escrow</td>
<td>23</td>
</tr>
<tr>
<td>8.5</td>
<td>Review of Pricing Documents</td>
<td>24</td>
</tr>
<tr>
<td>8.6</td>
<td>Proprietary Information</td>
<td>24</td>
</tr>
<tr>
<td>8.7</td>
<td>Return of Pricing Documents</td>
<td>24</td>
</tr>
<tr>
<td>9</td>
<td>Traffic Control and Restrictions</td>
<td>25</td>
</tr>
<tr>
<td>9.1</td>
<td>Construction Traffic Management Plan</td>
<td>25</td>
</tr>
<tr>
<td>9.2</td>
<td>Traffic Control</td>
<td>25</td>
</tr>
<tr>
<td>10</td>
<td>Applicable Law and Regulatory Approvals</td>
<td>26</td>
</tr>
<tr>
<td>10.1</td>
<td>Obligation to Comply with Laws, Regulations and Ordinances and Regulatory Approvals</td>
<td>26</td>
</tr>
<tr>
<td>10.2</td>
<td>Obligation to Obtain Regulatory Approvals</td>
<td>26</td>
</tr>
<tr>
<td>10.3</td>
<td>Payment for Regulatory Approvals</td>
<td>27</td>
</tr>
<tr>
<td>11</td>
<td>Warranties</td>
<td>28</td>
</tr>
<tr>
<td>11.1</td>
<td>Warranties</td>
<td>28</td>
</tr>
<tr>
<td>11.2</td>
<td>Extension of Warranties</td>
<td>28</td>
</tr>
<tr>
<td>11.3</td>
<td>Subcontractor Warranties</td>
<td>29</td>
</tr>
<tr>
<td>11.4</td>
<td>Assignment of Warranties</td>
<td>29</td>
</tr>
<tr>
<td>11.5</td>
<td>Damages for Breach of Warranty</td>
<td>29</td>
</tr>
<tr>
<td>11.6</td>
<td>Exclusive Remedy</td>
<td>29</td>
</tr>
<tr>
<td>11.7</td>
<td>Habitat and Landscaping Maintenance</td>
<td>30</td>
</tr>
<tr>
<td>12</td>
<td>Records</td>
<td>31</td>
</tr>
<tr>
<td>12.1</td>
<td>Maintenance of, Access to and Audit of Records</td>
<td>31</td>
</tr>
<tr>
<td>12.2</td>
<td>Retention of Records</td>
<td>31</td>
</tr>
<tr>
<td>12.3</td>
<td>Public Records</td>
<td>32</td>
</tr>
<tr>
<td>12.4</td>
<td>Reporting Requirements</td>
<td>32</td>
</tr>
<tr>
<td>12.5</td>
<td>Not Used</td>
<td>33</td>
</tr>
<tr>
<td>12.6</td>
<td>Subcontractor Pricing Documents</td>
<td>33</td>
</tr>
<tr>
<td>12.7</td>
<td>Title to Work Product</td>
<td>33</td>
</tr>
<tr>
<td>12.8</td>
<td>Equipment Warranties</td>
<td>33</td>
</tr>
<tr>
<td>13</td>
<td>Critical Path Method Schedule</td>
<td>34</td>
</tr>
<tr>
<td>13.1</td>
<td>CPM/Payment Schedule</td>
<td>34</td>
</tr>
<tr>
<td>13.2</td>
<td>Allocation of Contract Price</td>
<td>34</td>
</tr>
<tr>
<td>13.3</td>
<td>Initial CPM/Payment Schedule; Monthly Updates</td>
<td>34</td>
</tr>
<tr>
<td>13.4</td>
<td>CPM/Payment Schedule Requirements</td>
<td>34</td>
</tr>
<tr>
<td>14</td>
<td>Compensation</td>
<td>35</td>
</tr>
<tr>
<td>14.1</td>
<td>Contract Price</td>
<td>35</td>
</tr>
<tr>
<td>14.2</td>
<td>Payments</td>
<td>35</td>
</tr>
<tr>
<td>14.2.1</td>
<td>Source of Payments</td>
<td>35</td>
</tr>
<tr>
<td>14.2.2</td>
<td>Delivery of Draw Request and Certificate</td>
<td>35</td>
</tr>
<tr>
<td>14.2.3</td>
<td>Maximum Payment Curve</td>
<td>36</td>
</tr>
<tr>
<td>14.2.4</td>
<td>Payment</td>
<td>36</td>
</tr>
<tr>
<td>14.2.5</td>
<td>Continued Performance During Disputes</td>
<td>36</td>
</tr>
<tr>
<td>14.2.6</td>
<td>Retainage</td>
<td>36</td>
</tr>
</tbody>
</table>
ARTICLE 23. CONTRACTING PRACTICES ................................................................. 67
23.1 OBLIGATION TO REFRAIN FROM DISCRIMINATION ................................. 67
23.2 DISADVANTAGED BUSINESS ENTERPRISES .................................................. 67
23.3 DISADVANTAGED BUSINESS ENTERPRISE EMPLOYMENT AND CONTRACTING PROCEDURES ........................................... 67
23.4 SUBCONTRACTS ............................................................................................. 67

ARTICLE 24. REPRESENTATIVES ........................................................................... 69
24.1 DESIGNATION OF REPRESENTATIVES; COOPERATION WITH REPRESENTATIVES ............................................................. 69

ARTICLE 25. DEFAULT .......................................................................................... 70
25.1 DEFAULT OF CONTRACTOR ........................................................................... 70
25.2 REMEDIES FOR CONTRACTOR EVENT OF DEFAULT .................................. 71
25.3 CERTAIN LIMITATIONS ON DEPARTMENT REMEDIES ............................... 72
25.4 FAILURE TO DELIVER PAYMENT; UNAVAILABILITY OF FUNDS ......................... 72
25.5 LIMITATION ON CONTRACTOR REMEDIES ................................................. 72
25.6 LIQUIDATED DAMAGES SEE SECTION SUPPLEMENT .................................. 73
25.7 CONSEQUENTIAL DAMAGES ........................................................................ 73

ARTICLE 26. TERMINATION FOR CONVENIENCE ............................................... 74
26.1 NOTICE OF TERMINATION ........................................................................... 74
26.2 CONTRACTOR’S RESPONSIBILITIES AFTER RECEIPT OF NOTICE OF TERMINATION ................................................................. 74
26.3 INVENTORY ..................................................................................................... 75
26.4 SETTLEMENT PROPOSAL ............................................................................. 75
26.5 AMOUNT OF TERMINATION SETTLEMENT ................................................... 75
26.6 NO AGREEMENT AS TO AMOUNT OF CLAIM .............................................. 76
26.7 REDUCTION IN AMOUNT OF CLAIM ............................................................. 76
26.8 PAYMENT ....................................................................................................... 76
26.9 INCLUSION IN SUBCONTRACTS ................................................................... 77
26.10 NO CONSEQUENTIAL DAMAGES ................................................................ 77
26.11 NO WAIVER .................................................................................................. 77
26.12 DISPUTE RESOLUTION ................................................................................ 77

ARTICLE 27. DISPUTE RESOLUTION .................................................................. 78

ARTICLE 28. MISCELLANEOUS PROVISIONS ..................................................... 79
28.1 INCORPORATION OF MISCELLANEOUS PROVISIONS IN COMPREHENSIVE AGREEMENT .................................................. 79
28.2 ENTIRE AGREEMENT; AMENDMENT ............................................................ 79
28.3 EXPLANATIONS; OMISSIONS, MISDESCRIPTONS, INCLUSIONS WITHOUT LIMITATION ......................................................... 80
28.4 COMPUTATION OF PERIODS ........................................................................ 80
28.5 APPROVALS ................................................................................................... 80
28.7 CORRESPONDENCE ....................................................................................... 80
28.8 STANDARD SPECIFICATIONS ..................................................................... 81
APPENDICES

Appendix 1 - Definitions
Appendix 2 - Initial Engineering Scope of Work
Appendix 3 - Form of Draw Request and Certificate
Appendix 4 - Form of Payment Bond
Appendix 5 - Form of Performance Bond
Appendix 6 - Scope of Work
  Attachment A General Layout
  Attachment B Quality Assurance and Control Inspection Program
  Attachment C Plan Preparation and Plan Development
  Attachment D Index to Special Provisions and Special Provision Copied Notes
Appendix 7 - Disadvantaged Business Enterprise Subcontracting Plan
Appendix 8 - Designation of Initial Representatives
Appendix 9 - Division 1, Standard Specifications
Appendix 10 - Federal Requirements
Appendix 11 - Modifications to Department’s Right of Way Manual of Instructions
Appendix 12 - Escrow Agreement - Retainage
Appendix 13 - Dispute Resolution Board
Appendix 14 - Escrow Agreement-Pricing Documents
DESIGN-BUILD CONTRACT

This DESIGN-BUILD CONTRACT ("Contract") is made and entered into as of January 11, 2002, by and between the Virginia Department of Transportation, a department of the Commonwealth of Virginia ("Department"), and Kellogg Brown & Root, Inc., a Delaware corporation ("Contractor"), with reference to the following facts:

RECITALS

A. Concurrently herewith, Department and Contractor have entered into a Comprehensive Agreement concerning the design, construction, warranty and maintenance of the Coalfields Expressway as a limited access highway (the "Comprehensive Agreement"). This Contract is entered into pursuant to the Comprehensive Agreement.

B. The Work will consist of several independent Scopes of Work: the Initial Engineering Work, as described in Appendix 2, and the Section Completion Work for each of Sections A, B, C and D of the Project (each, a "Project Section"). In general, the purpose of the Initial Engineering Work is to enable Contractor to proceed with the Section Completion Work for each Project Section expeditiously and efficiently once it has received notices to proceed with such work, and to enable a fixed price to be set for the Section Completion Work for each Project Section.

C. The price for Initial Engineering Work is set forth in Section 14.1.1 of the Design-Build Contract. The Contract Price for the Section Completion Work for each Project Section will be established upon completion of sufficient preliminary engineering to form a basis for Contractor and Department to reach agreement on a Contract Price for the Section Completion Work for each Project Section, which will be set forth in a Section Supplement to be attached to this Contract. The Contract Prices for Section Completion Work for each of Project Sections B, C and D will also be subject to escalation in accordance with the related Section Supplement.

D. Once the Contract Price for Section Completion Work for each Project Section is established, the parties intend for this Contract, as supplemented by the Section Supplement for each such Project Section, to be a lump sum design-build contract obligating Contractor to perform all Work necessary to obtain completion of such Project Section by the deadlines specified in the Section Supplement, for the Contract Price for such Section Completion Work, subject only to certain specified exceptions set forth herein. Department has determined, and Contractor has acknowledged, that this approach is necessary due to the fact that limited funds are available for the Project.

E. If Contractor fails to complete any Project Section in accordance with the time limitations set forth in the related Section Supplement, then Department will suffer losses and damages which are extremely difficult, if not impossible, to ascertain. This Contract thus provides that Contractor shall be liable for Liquidated Damages in the event such completion is delayed.

F. The Baseline Engineering, upon approval by the Department, will be the basis for the final design of each Project Section to be furnished by Contractor. It is intended that Contractor will assume full responsibility and liability with respect to design of the Work authorized hereunder in accordance with the terms of the Contract.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:
ARTICLE 1. DEFINITIONS; CONTRACT DOCUMENTS; ACCEPTANCE OF PROJECT SITE

1.1 Certain Definitions

Appendix 1 contains the meaning of certain terms used in the Contract Documents. Division 1 of the Standard Specifications, attached hereto as Appendix 9, contains the meaning of certain technical terms.

1.2 Recitals

Recitals A through F are hereby incorporated by reference herein.

1.3 Contract Documents

The agreement between the parties contains a number of Contract Documents. Additional Contract Documents with respect to Section Completion Work of each Section shall be specified in the Section Supplement for such Section. The Design-Build Contract sets forth certain general terms and conditions that apply to all Work under the Contract. The Initial Engineering Scope of Work sets forth certain additional terms and conditions which apply to the Initial Engineering Scope of Work. The Section Supplements will set forth certain additional terms and conditions which apply to the Section Completion Work for the related Project Section.

1.4 Order of Precedence

Each of the Contract Documents is an essential part of this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract. In the event of any conflict among the Contract Documents, this Contract and all Change Orders shall in all events control. With respect to the other Contract Documents the order of precedence (highest to lowest) shall be as set forth below.

(a) For design Work:

1. Scope of Work

2. Standard Specifications (including the order of precedence set forth in § 105.05 thereof)

3. Baseline Engineering and Initial Engineering Work as approved by VDOT

(b) For all other matters:

1. Plans and Specifications, excluding any deviations from requirements of the other Contract Documents contained therein which have not been approved in writing as such by Department

2. Scope of Work

3. Standard Specifications

Unless otherwise specified by Department, any reference in the Contract Documents to a described publication affecting any portion of the Work shall be deemed to mean the latest edition or
revision thereof and amendments and supplements thereto in effect on the Agreement Date. Referenced standards and Regulatory Approvals obtained by Department which constitute Contract requirements shall have the same order of precedence as the Contract Document which references them.
ARTICLE 2. CONTRACTOR’S DESIGN, PROCUREMENT AND CONSTRUCTION RESPONSIBILITIES

2.1 Design and Construction

Contractor shall furnish the design of each Project Section, and shall construct the Project as designed in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State, in a good and workmanlike manner, and in accordance with the terms and conditions set forth in the Contract Documents. Except as otherwise specifically provided in this Contract, Contractor shall be solely responsible for providing all equipment, materials, labor, services and efforts necessary to achieve Final Acceptance of each Project Section on or before the deadlines set forth in the Section Supplement for such Project Section; and, subject only to the terms of Article 19, the cost of all such equipment, materials, labor, services and efforts is included in the Contract Price for such Section Completion Work.

2.2 Contractor Obligations

Contractor hereby covenants as follows:

2.2.1 Except as provided in Sections 6.5 and 10.2.4 of this Contract, Contractor shall furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, equipment, labor, services and efforts which this Contract specifies will be undertaken by other Persons) to construct each Project Section in accordance with the requirements of the Contract Documents, the related CPM/Payment Schedule, all Regulatory Approvals, the approved Quality Assurance and Control Inspection Program, the approved Safety Program, the approved Construction Traffic Management Plan and all other applicable safety, environmental and other requirements, taking into account the Project Right of Way limits and other physical limits resulting from constraints affecting each such Project Section, so as to achieve Final Acceptance of the Project Section by the deadlines specified in the Section Supplement, and otherwise to do in a timely manner everything required by and in accordance with the Contract Documents.

2.2.2 All design and engineering Work shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State, by personnel with demonstrated competence, integrity, responsibility and professional qualifications necessary for the satisfactory performance of the Work in accordance with the Contract Documents. Such Persons shall assume professional responsibility for the accuracy and completeness of the Construction Documents prepared by them and shall exercise their skill, ability and judgment reasonably for Department’s benefit.

2.2.3 Contractor shall at all times provide a Project Manager approved by Department who will have responsibility for the prosecution of the Work and who will act as a single point of contact in all matters on behalf of Contractor. Contractor shall not change the Project Manager without the prior written notification to the Department.

2.2.4 Contractor shall obtain and pay the cost of obtaining all Regulatory Approvals required in connection with the Project (except as provided otherwise in Sections 10.2. and 10.3).

2.2.5 Contractor shall undertake and properly perform all actions required by and all actions necessary to maintain in full force and effect all Regulatory Approvals, including performance of all environmental mitigation measures required by the Contract Documents.
2.2.6 Contractor shall cooperate with Department and local agencies in all matters relating to
the Project, including review of the design of the Project and conducting inspections during the
construction of the Project.

2.2.7 Contractor shall supervise and be responsible to Department for acts and omissions of
Contractor’s employees, agents, officers and Subcontractors and other Persons performing portions of the
Work, as though all such Persons were directly employed by Contractor.

2.2.8 Contractor waives any right to file or enforce any mechanics liens with respect to
parcels acquired for and transferred to the Department or the Commonwealth of Virginia or any other
property of the Department or the Commonwealth of Virginia. Contractor acknowledges that
consideration for such waiver is reflected in the Contract Price. Contractor shall require each
Subcontractor to waive its right to file or enforce any such mechanics liens.
ARTICLE 3. PLANS AND SPECIFICATIONS

3.1 Commencement of Design Work

3.1.1 Contractor shall commence performance of Initial Engineering Work, and shall ensure that performance of such Work is commenced by its Subcontractors, promptly following the Initial Engineering Notice to Proceed. Contractor shall commence performance of final design and other non-construction Section Completion Work for each Project Section and shall ensure that performance of such Work is commenced by its Subcontractors, promptly following the Notice to Proceed for the Section Completion Work for such Project Section.

3.1.2 The Department shall not issue a Notice to Proceed for Initial Engineering Work until (A) the Department has received written confirmation from the Federal Highway Administration ("FHWA") that (i) FHWA has not classified the Project or any Section thereof as a “Mega Project”, (ii) the Department is not required to submit an initial or any annual financial plans for the Project or any Section thereof pursuant to 23 U.S.C. § 106(h) and the related FHWA Financial Plan Guidance published May 23, 2000; (iii) the Coalfields Expressway has been included in the National Highway System, and (iv) FHWA has indicated its acceptance of the form of the Design-Build Contract in a manner satisfactory to Department; (B) the Department has approved the CPM/Payment Schedule for Initial Engineering Work; and (C) the Department has approved the cost of the Professional Liability Insurance to be acquired under Section 22.2 as required by Section 14.1.1.

3.1.3 Contractor shall have no right to payment for any Section Completion Work it performs (except to the extent performed as part of the Initial Engineering Scope of Work) prior to the issuance of the Notice to Proceed (NTP) for such Section Completion Work.

3.1.4 Contractor shall complete the Baseline Engineering Work by the date set forth in the Comprehensive Agreement, Section 4.3(a)(i), and the Initial Engineering Work for Sections B, C and D by the respective dates set forth in the Comprehensive Agreement, Sections 4.3(b)(i), 4.3(c)(i) and 4.3(d)(i).

3.2 In-Progress Review

Contractor shall provide Department with the opportunity to perform continuous review and overview of the design through a series of design reviews incorporated into a CPM/Payment Schedule agreed to from time to time by Department and Contractor. Contractor shall furnish a schedule for provision and review of design submittals which shall be subject to approval by Department. Contractor shall cause all design submittals to be produced and delivered to Department, local agencies and any other Persons whose approval is required, in compliance with the requirements of the Scope of Work, and the Plan Preparation and Plan Development document attached as Attachment C to the Scope of Work within the time periods set forth in the CPM/Payment Schedule.

3.3 Design Approval

Department shall have the right to review and comment on all Draft Plans and Specifications for compliance with the requirements of the Contract Documents. Contractor acknowledges that it is responsible for satisfying all such requirements and that Department will have the right to disapprove any design approach that is not consistent with the Baseline Engineering or that is not in compliance with the requirements of the Contract Documents unless said approach was previously approved in writing by Department. Provided that Department has the opportunity to perform continuous review and overview
of the design as provided in Section 3.2, Department's Chief Engineer's review of the completed Draft Plans and Specifications shall be conducted within 15 Business Days after receipt thereof. Contractor shall revise and modify all such documents or materials so as to fully reflect all comments and shall deliver to Department the revised submittal for review and comment. Department's right to review and comment, and Contractor's responsibility to comply with the requirements of the Contract Documents, shall be subject to the provisions of Section 3.8.

3.4 Review Deadlines

Department shall use reasonable efforts to accommodate requests by Contractor for review of specific design submittals within 10 Days of submission. Contractor acknowledges that expediting the review of prioritized submittals may result in a delay in review of lower priority submittals. Department and Contractor shall work cooperatively to prioritize the different submittals and achieve an acceptable review schedule. Contractor shall bear full responsibility for obtaining approvals from local agencies and others, provided that Department will use reasonable efforts to expedite critical approvals from such entities, if and as requested by Contractor.

3.5 Status of Design at Commencement of Work

Contractor shall have no right to rely on any of the documentation or information provided by Department or other Persons, other than the Contract Documents supplied by Department. Contractor shall have full responsibility for the design of the Project. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Guaranteed Completion Date as a result of increased costs or delays incurred due to any errors, omissions or defects in design. Contractor agrees that it shall have no right to seek additional compensation or a time extension, except as specifically permitted by Article 19.

3.6 Initial Engineering Work

Contractor understands and agrees that the Initial Engineering will be prepared solely by Contractor, and Department shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be legally or contractually responsible, by reason of any use of any information contained in the Initial Engineering or any action or forbearance in reliance thereon.

3.7 Exceptions and Deviations from Department Standards

3.7.1 Department will reasonably consider Contractor’s requests for exceptions to the Department Standards, in addition to the modifications already reflected in Appendix 9 and Attachment D to Appendix 6, as they relate to means and methods of construction that are not necessary or appropriate for design-build implementation.

3.7.2 Contractor may apply for deviations from applicable Department Standards. All applications shall be in writing and shall include justification for the request, addressing safety and cost considerations. Department shall consider in good faith, but has no obligation to approve, any such application, and Contractor shall bear the burden of persuading Department that the deviation sought constitutes sound and safe engineering and achieves or substantially achieves Department's applicable safety standards and criteria. No deviation shall exist or be effective unless and until stated in writing signed by Department. Department's failure to issue a written approval of a requested deviation within 21 Days after Contractor applies therefor in writing shall be deemed a denial of such application.
Department’s determination regarding Contractor’s application for a deviation shall be final and shall not
be subject to dispute resolution hereunder.

3.7.3 Contractor may apply for approvals from Department of interpretive engineering
decisions concerning the meaning, scope, interpretation and application of the Department Standards. All
applications for such approvals shall be in writing. Department may issue a written approval of
Contractor's proposed interpretive engineering decision (if any), may issue its own interpretive
engineering decision or may disapprove any interpretive engineering decision Contractor proposes.
Department's failure to issue a written approval or of Contractor’s own interpretive engineering decision
within 21 Days after Department received Contractor’s written application shall be deemed a denial of
such application. Department’s determination regarding Contractor’s application for an interpretive
engineering decision shall be final but subject to dispute resolution hereunder.

3.7.4 In the event that Department reverses a written deviation or interpretive engineering
decision previously given under Section 3.7.2 or 3.7.3, such reversal shall constitute a Directed Change.

3.8. Limitations on Contractor’s Right to Rely.

3.8.1 Contractor expressly acknowledges and agrees that the Department's rights
under the Contract Documents (i) to review, comment on, approve, disapprove and/or accept designs,
plans, specifications, work plans, construction, equipment, installation, books, records, reports or
statements, and (ii) to review, comment on and approve or disapprove qualifications and performance of,
and to communicate with, contractors, subcontractors, architects, engineers or other consultants of
Contractor (A) exist solely for the benefit and protection of the Department, (B) do not create or impose
upon the Department any standard or duty of care toward any Contractor Party, all of which are hereby
disclaimed, other than a duty to act in good faith (C) may not be relied upon, nor may the Department's
exercise or failure to exercise any such rights be relied upon, by Contractor in determining whether
Contractor has satisfied the standards and requirements set forth in this Contract or any other Contract
Document and (D) may not be asserted, nor may the Department's exercise or failure to exercise any such
rights be asserted, against the Department by Contractor as a defense, legal or equitable, to Contractor's
obligation to fulfill such standards and requirements. Regardless of the Department's exercise or failure
to exercise any such rights, regardless of the issuance of permits or certificates of completion or
acceptance, and regardless of Final Acceptance, except as provided in Section 6.5 and 10.2.4, Contractor
at all times shall have an independent duty and obligation to obtain all necessary Regulatory Approvals
to, design, acquire, and construct the Project and Project Right of Way in accordance with the standards
and requirements set forth in the Contract Documents.

3.8.2 To the maximum extent permitted by law, Contractor hereby releases and
discharges the Department from any and all duty and obligation to cause permitting, right of way
acquisition, Utility Relocation, construction, equipping, and maintenance of or for the Project or Project
Right of Way, by the Contractor, to satisfy the standards and requirements set forth in the Contract
Documents.

3.8.3 No rights of the Department described in Section 3.8.1 above, no exercise or
failure to exercise such rights, no failure of the Department to meet any particular standard of care in the
exercise of such rights, no issuance of permits or certificates of completion or acceptance and no Final
Acceptance shall:

(i) relieve Contractor of its responsibility for the selection and the
competent performance of all contractors, subcontractors, architects, engineers and other consultants
(except those hired by the Department);
(ii) relieve Contractor of any of its obligations or liabilities under the Contract Documents;

(iii) be deemed or construed to waive any of the Department's rights and remedies under the Contract Documents; or

(iv) be deemed or construed as any kind of representation or warranty, express or implied, by the Department.

3.8.4 Notwithstanding subsections 3.8.1, 3.8.2 and 3.8.3 above, (i) Contractor shall be entitled to rely on specific written deviations and interpretative engineering decisions the Department gives under the Contract Documents, (ii) the Department is not relieved from any liability arising out of a knowing, intentional misrepresentation under any written statement the Department delivers, and (iii) the Department is not relieved from its obligations under the Contract Documents.
ARTICLE 4. CONSTRUCTION WORK

4.1 Conditions Precedent to Commencement of Construction Work

Contractor shall have no right to commence construction Work with respect to any Project Section unless and until the following conditions, in addition to the conditions set forth in Section 4.2, are satisfied or unless Department, in its sole discretion, waives any such condition in writing:

4.1.1 all conditions precedent to the issuance of the Notice to Proceed for the Section Completion Work for such Project Section set forth in Section 4.2 of the Comprehensive Agreement and the Supplement for such Project Section shall have been satisfied and the Department shall have issued the Notice to Proceed for the Section Completion Work for such Project Section;

4.1.2 Department shall have approved in writing the initial designation of Construction Segments for such Project Section;

4.1.3 Department shall have approved the CPM/Payment Schedule for such Section Completion Work, Quality Assurance and Control Inspection Program, Safety Program and Construction Traffic Management Plan for such Project Section;

4.1.4 Contractor shall not then be in breach of any material requirement of the Contract Documents or the other Project Agreements to which it is a party, including requirements regarding non-discrimination, minority employment and disadvantaged business enterprises;

4.1.5 all required insurance policies and bonds with respect to such Section Completion Work shall have been received by Department; and

4.1.6 there exists no court order which restrains, enjoins, challenges or delays performance of the Work or the granting or renewal of any Regulatory Approval with respect to such Section Completion Work.

4.2 Conditions Precedent to Construction of Portion of a Project Section

Contractor shall have no right to commence construction of any portion of any Project Section unless and until all of the following conditions, in addition to the conditions set forth in Section 4.1, are satisfied or unless Department in its sole discretion waives any such condition in writing, and Contractor shall commence such construction in accordance with the CPM/Payment Schedule promptly following satisfaction of all such conditions and the conditions set forth in Section 4.1:

4.2.1 Department’s Chief Engineer shall have approved in writing the Plans and Specifications for such portion of the Project Section;

4.2.2 all Regulatory Approvals necessary for construction of the applicable portion of the Project Section shall have been obtained and all conditions of such Regulatory Approvals which are a legal prerequisite to commencement of such construction shall have been satisfied; and

4.2.3 all necessary rights of access shall have been obtained for such portion of the Project Section.
4.3 Conditions Precedent for Department’s Benefit

All the conditions precedent set forth in this Article 4 are for the sole benefit of Department. Any condition precedent may be waived by Department; provided, however, that no person or entity shall be entitled to assume that Department will waive or refuse to waive any condition precedent in the absence of strict compliance therewith. No waiver of any condition precedent shall be enforceable unless signed by Department in writing. Unless Department waives a condition precedent which requires action by Contractor to be satisfied, Contractor shall remain bound to use diligent efforts to satisfy the condition precedent.
ARTICLE 5. PROJECT MANAGEMENT

5.1 Supervision and Construction Procedures

5.1.1 Responsibility

Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and Site safety and for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

5.1.2 Safety Program

Contractor shall have full responsibility for jobsite safety, including provision of and compliance with the Safety Program for each Project Section to be submitted to Department for its approval prior to the Notice to Proceed for Section Completion Work for such Project Section. Department will advise Contractor of situations which Department deems unsafe and shall have the right to require Work to be stopped as specified in Section 20.2. Contractor shall take all reasonable precautions and be responsible for the safety of, and shall provide protection to prevent damage, injury or loss to: (a) all employees of Contractor and its Subcontractors performing the Work and other persons (including employees of Department) who are on Site or would reasonably be expected to be affected by the Work; (b) the Work and materials and equipment to be incorporated therein; and (c) other property at or adjacent to the Site.

5.1.3 Security

Until the Final Acceptance Date for a Project Section, Contractor shall provide appropriate security for the Site of such Project Section.

5.1.4 Adjoining Property

Contractor shall ensure that all of its activities and the activities of its employees, agents, officers and Subcontractors and all other Persons for whom Contractor may be legally or contractually responsible are undertaken in a manner that will reasonably minimize the effect on surrounding property and the public.

5.1.5 Differing Site Conditions

In addition to the requirements of Article 19, the procedures set forth in this Section 5.1.5 shall apply in the event of Contractor’s discovery of any Differing Site Conditions.

5.1.5.1 Notification to Department; Work Stoppage

In the event of any such discovery, Contractor shall, within the close of the second Business Day following such discovery, notify Department thereof telephonically or in person, to be followed immediately by written notification. Contractor shall immediately stop Work in and secure the affected area. In such event, Department shall have the right, but not the obligation, to view the location. Following the close of the second Business Day following written notice to Department, Contractor may proceed with the Work, provided it can do so in compliance with all applicable requirements of the Contract Documents. Contractor shall keep Department apprised regarding actions which it is taking to assure compliance with all such requirements. The notification and work stoppage described above constitute a condition precedent to Contractor’s right to file a Request for Change Order.
5.1.5.2 Assumption of Risk

Contractor acknowledges and agrees that it shall not be entitled to any increase in the Contract Price for additional costs of performing the Work associated with any of the above-described conditions, except to the extent of any Change Order issued under Article 19 or as directed under Article 27. Contractor acknowledges and agrees that Contractor’s right to obtain a time extension with respect to delays caused by such conditions is subject to the limitations and conditions contained in Article 19.

5.2 Department Oversight

5.2.1 Effect of Reviews, Inspections, Tests and Approvals

Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by reviews, tests, inspections or approvals performed by any Persons, or by any failure of any Person to take such action. Subject to Section 3.7.4, the reviews, inspections, tests and approvals conducted by Department, Governmental Persons and others do not constitute acceptance of the materials or Work reviewed, tested or inspected, and Department may reject or accept any Work or materials, request changes and/or identify additional Work which must be done at any time prior to the Final Acceptance Date, whether or not previous reviews, inspections, tests or approvals were conducted by any such Persons.

5.2.2 Inspection and Testing

5.2.2.1 Contractor shall perform whatever inspection, sampling and testing Contractor deems appropriate in order to comply with its obligations under the Contract Documents.

5.2.2.2 The QA Manager shall be responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program.

5.2.2.3 During the construction of any Project Section and until the Final Acceptance Date for such Project Section, Department shall designate two qualified staff engineers to perform oversight activities for the Project and to provide necessary coordination with Contractor. Such Department representatives shall have full and complete access to the Project, the Work in progress, the "daily QA/QC diaries," and to other technical documents and Project records associated with quality control, materials verification, materials installation and testing. Contractor shall give such Department representatives not less than two Business Days prior notice of and opportunity to participate in any meetings described in the Quality Assurance and Control Inspection Program attached to the Scope of Work.

5.2.2.4 All materials and each part or detail of the Work shall also be subject to inspection and testing by Department. Contractor shall not be entitled to any additional compensation or time so long as any such inspection and testing reasonably conforms to the CPM/Payment Schedule. Such inspection does not make such Person a party to this Contract nor will it change the rights of the parties hereto. Contractor hereby consents to such inspection and testing. Upon request from Department, Contractor shall furnish information to such persons as are designated in such request and shall permit such persons access to all parts of the Work.

5.2.2.5 At all times before Final Acceptance of a Project Section, Contractor shall remove or uncover such portions of the finished construction Work as directed by Department. After examination by any Persons designated by Department, Contractor shall restore the Work to the standard...
required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Contractor’s cost. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by Department in accordance with Attachment B to the Scope of Work or without adequate documentation that the Work was inspected by the QA Manager in accordance with Attachment B to the Scope of Work may be ordered uncovered, removed or restored at Contractor’s cost, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.2.2.5 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a Department-Caused Delay, and Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.
ARTICLE 6. PROJECT RIGHT OF WAY ACQUISITION

Contractor shall be responsible for acquiring the Project Right of Way as specified in this Article 6.

6.1 Project Right of Way Acquisition Requirements

6.1.1 Contractor shall prepare and obtain the Department’s approval of the Right of Way Acquisition Plan for each Project Section prior to commencement of any Project Right of Way acquisitions for such Project Section.

6.1.2 Contractor shall comply with all Laws, Regulations and Ordinances applicable to right of way acquisitions by Department, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. Section 4651 et seq. and any amendments thereto, as supplemented by the regulations of 49 C.F.R., Part 24, and Title 25, Chapter 6, Section 25-235 et seq., Code of Virginia. Contractor's activities shall also be in substantial conformity with Department's Manual of Instructions for Right of Way and Utility Relocations as modified by the provisions of Appendix 11, attached hereto.

6.1.3 All real property interests that Contractor acquires for the Project shall be acquired by Contractor as agent of the Department for purposes of acquiring property only. Such interests shall be fee simple title, or such other real property interest approved in writing by the Department, and shall be conveyed by a general warranty deed (unless otherwise approved in writing by the Department), subject only to conditions of title that may be approved in writing by the Department in its sole discretion. Permanent easements for drainage or slopes, utility easements, limited access rights, and temporary construction easements shall be included as part of the same transfer document or be transferred by separate instrument, when so indicated in the Right of Way Acquisition Plan. The Department acknowledges that acceptable conveyances of property may exclude subsurface mineral rights if not identified in the property title. In such event, Contractor shall make a good faith recommendation to the Department consistent with its obligations under Section 2.1 whether the acquisition of mineral rights is required to ensure the Project will not be subject to subsidence from the mining of such minerals by the owner of such rights.

6.1.4 All persons or firms Contractor intends to use in performing any portion of the acquisitions shall meet Department's Consultant Prequalification Guidelines.

6.1.5 Contractor shall perform environmental assessments, investigations and studies in accordance with the requirements of Section 6.5.1 of this Contract on property to be acquired for the Project Right of Way. Contractor shall notify Department of any recommendations and conclusions contained in the studies conducted pursuant to Section 6.5.1 pertaining to the property to be acquired for the Project Right of Way to allow Department to consider whether and in what form it wishes title to be acquired.

6.1.6 Contractor shall cause all persons performing acquisition activities by or on behalf of Contractor to maintain a complete, legible diary of each contact with a property owner or his or her representative (which may be maintained electronically). The diary shall include the time, place, amount of offer, identification of the party (ies) to whom any offer is made, all parties present, and the response of the owner or its representative. The diary is to be retained for Contractor’s permanent records and made available to Department upon request. In addition, Contractor shall furnish to Department, upon request, miscellaneous correspondence and written recommendations regarding future negotiations.
6.1.7 Upon reasonable notice, all persons performing acquisition activities by or on behalf of Contractor shall be available for consultation and testimony (including discussion of diary notes and acquisition events) with Department representatives during and after completion of acquisitions.

6.1.8 Except for disclosures to Department or to attorneys designated and appointed by the State Attorney General and other disclosures first approved or directed by Department in writing, Contractor shall keep strictly confidential and not disclose any diaries, notes, correspondence, documents, agreements, appraisals or other information pertaining to or arising out of Contractor's acquisition work and activities except as required by law or order of any court. Should such records become subject of a request for public disclosure, Contractor shall immediately notify Department of such request and the date by which any response is due in order to give the Department an opportunity, if it so determines, to oppose the request and seek appropriate legal relief.

6.1.9 All costs in connection with acquisitions of Project Rights of Way shall be paid as provided in Section 6.6.1. The CPM/Payment Schedule for each Project Section shall set forth the dates by which Contractor anticipates acquiring the properties specified in the Right of Way Acquisition Plan for each such Project Section.

6.2 Right of Way Acquisition Plan and Right of Way Plans

6.2.1 (a) Prior to commencement of Right of Way acquisition activities with respect to any Project Section, Contractor shall prepare a Right of Way Acquisition Plan for such Project Section.

(b) The Right of Way Plans are required to be approved by the Department and the State Transportation Commissioner prior to any acquisition of property. The Department shall approve or disapprove in writing the Right of Way Plans within fifteen (15) Days after submission by Contractor. If the Department disapproves such plan, it shall indicate in writing the reasons for such disapproval. Provided, however, the Department’s failure to provide written approval or disapproval within fifteen (15) Days shall not be deemed an approval. If disapproved, Contractor shall submit a revised Right of Way Plan, incorporating Department’s comments.

6.2.2 In the event that Contractor desires to obtain any parcels not covered by the approved Right of Way Acquisition Plan and/or Right of Way Plans, Contractor shall submit a revision to the Right of Way Acquisition Plan and the Right of Way Plans to Department, and shall obtain Department's written approval thereof prior to undertaking any negotiations or other acquisition work with respect to any new parcels to be obtained pursuant to the revised plans.

6.2.3 In connection with the acquisition of parcels covered by the Right of Way Acquisition Plan, Contractor shall submit to Department for approval appraisals of all such parcels. Department shall have ten (10) Business Days within which to approve or disapprove such appraisals in writing. To the extent Department disapproves an appraisal, it shall communicate in writing the specific reasons for such disapproval within the time period set forth above. Provided, however, the Department’s failure to approve or disapprove any appraisal in writing within such ten (10) Business Days shall not be deemed an approval. Once an appraisal has been approved as described above, Contractor may offer an additional amount in an attempt to reach a voluntary settlement as authorized in writing by the Department.

6.3 Acquisition by Condemnation.

6.3.1 Contractor may request Department to institute eminent domain proceedings only after complying with the requirements for negotiations as indicated in the approved Right of Way Acquisition Plan. Contractor shall initiate such process by entering the legal description of the parcel, and the
appraisal information and negotiation information in the Right of Way and Utilities Management System (RUMS) (for which training will be provided by Department on request of Contractor), and by submittal to the Department of a complete Condemnation Package as described in Section 6.3.2. Contractor shall be responsible for making available condemnation witnesses, including experts, as may be requested by the Office of the Attorney General in all eminent domain proceedings. Department shall be responsible for determining if exceptions to the award are to be filed and further legal actions are warranted. Department shall be responsible for making any condemnation award payments in excess of the condemnation certificate amount.

6.3.2 The following documents are required to be included in the Condemnation Package:

(a) A request for initiation of condemnation proceedings signed by an authorized representative of Contractor, identifying the parcel and certifying that the requirements for negotiations and the approved Right of Way Acquisition Plan have been satisfied;

(b) A copy of Contractor’s written offer to the property owner and any written response from the owner;

(c) A legal description of the parcel;

(d) A fair market value appraisal, reviewed and approved by the Department;

(e) A 60-year title examination by individuals approved by the Department (including copies of documents identified in all exceptions listed therein and a plat of all easements identified therein); and

(f) The studies and analyses required by Section 6.5, including, in the event that the studies and analyses show any Hazardous Substances within the real property interest to be conveyed, a copy of any proposed conceptual remediation or containment plan and, if then available, the approval thereof by the Department of Environmental Quality or the United States Environmental Protection Agency as described in Article 6.5.3.

6.3.3 Within fifteen (15) Days after receiving a Condemnation Package in compliance with the requirements of Section 6.3.2 and applicable laws, Department shall execute and deposit with the Clerk of Court a Certificate of Take or Certificate of Deposit pursuant to Title 33, Chapter 1, Article 7, Code of Virginia.

6.3.4 Eminent domain proceedings shall be prosecuted by the Office of the Attorney General though designated appointed counsel. Department shall have sole discretion with respect to all decisions regarding the settlement of any eminent domain proceeding.

6.4 Acquisitions by Negotiation and Conveyances to Department.

6.4.1 Title to property shall be acquired in the Department’s name as shown on the Right of Way Acquisition Plan upon presentation of the following documents by the Contractor:

(a) A copy of the conveyance and other closing documents.
(b) Fair market value appraisal reviewed and approved by the Department meeting Department’s requirements and showing a value, which supports the acquisition price.

(c) For all parcels where fee simple title is being acquired or where the consideration is greater than $10,000 for any type of property rights being acquired other than temporary construction easements, an American Land Title Association (ALTA) extended coverage owner’s policy of title insurance (1992 or 1970 form) issued by a title insurance company acceptable to Department (including copies of documents identified in all exceptions listed therein and a plat of all easements identified therein); and

(d) The studies and analyses required by Section 6.5, including, in the event that the studies and analyses show any Hazardous Substances within the real property interests to be conveyed, a copy of any proposed remediation or containment plan, and if then available, the approval of such plan by the Department of Environmental Quality or the United States Environmental Protection Agency as described in Section 6.5.3.

6.4.2 Department will pre-approve forms to be used for purchase agreements and conveyance documents so that only the business terms and any revisions to the pre-approved forms will require written approval by Department.

6.4.3 Contractor shall ensure that the conveyance documents are recorded and that Department receives a complete set of closing documents within sixty (60) Days following the closing.

6.5 Hazardous Substance Investigations and Remediation.

6.5.1 Contractor shall cause a Transaction Screen Process or Phase I Environmental Investigation to be performed on all such properties to be acquired by Department by a qualified environmental consultant and in accordance with 42 U.S.C. Section 9601 (35) (B), as amended, with respect to the range of contaminants within the scope of the Comprehensive Environmental Response Compensation and Liability Act and petroleum products. The costs of such Transaction Screen Processes and Phase I Environmental Investigations are included in the Initial Engineering Price. The costs of additional studies required, Phase II Environmental Investigations, asbestos inspections and any design required to accommodate any containment, management, mitigation and remediation plans, shall be included in the Fixed Price Amount for Section Completion Work. Such Transaction Screen Processes, Phase I Environmental Investigations, and Phase II Environmental Investigations shall constitute all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial and customary practice as defined in 42 U.S.C. Section 9601(35)(B), as amended. Contractor shall submit a summary of the results of such investigations and recommendations, as needed, to Department for review and approval. In the event the Department authorizes further studies and analyses, Contractor shall develop the minimum standards and cost estimates for such further studies and analyses for review and approval of Department, and Contractor shall cause additional studies and analyses to be performed. Contractor shall submit a summary of results from any further studies and analyses to Department. The requirements of this Section 6.5.1 shall not relieve Contractor from performing additional investigation of any properties necessary to ensure proper management of contaminated construction residuals and providing worker and environmental protection from hazardous conditions during the course of construction or from otherwise complying with all Laws, Regulations and Ordinances.
6.5.2 In the event that such studies and reports indicate the presence of Hazardous Substances on the property, Department’s Chief Engineer or his or her designated representative shall determine whether Department is willing to consider an acquisition notwithstanding the presence of such Hazardous Substances.

6.5.3 If Department is willing to consider the acquisition, Contractor shall, in accordance with Section 6.5.6 of this Contract, assist the Department’s CMMR Contractor to obtain approval of any containment, management, mitigation or remediation plans, and estimates to perform these services, from the Department prior to the submittal of the Department approved plans to the Department of Environmental Quality or the United States Environmental Protection Agency, or otherwise coordinate its activities through these agencies.

6.5.4 If Department determines that it is not willing to proceed with the acquisition in accordance with Article 6.5.2 or that the requirements associated with containment, management, mitigation or remediation are unacceptable, Department shall notify Contractor and Contractor shall identify alternative property acceptable to Department. In the event of any delay resulting from identification and acquisition of alternative properties affecting the Critical Path, Contractor shall be eligible for an extension of the Guaranteed Completion Date in accordance with Article 19.

6.5.5 Contractor shall not knowingly transfer to Department any contaminated property without a conceptual containment, management, mitigation or remediation plan and, if then available, the approval of such containment or remediation plan by, the Department and the Department of Environmental Quality or the United States Environmental Protection Agency.

6.5.6 The Department shall contract directly with other contractors selected by the Department for the containment, management, mitigation, disposal and remediation of Hazardous Substances (“CMMR Services”). Contractor will provide services necessary to satisfactorily administer the contracts for CMMR Services. Contractor shall assist Department in developing the scope of work for CMMR Services and shall provide detailed quantity estimates of materials for bid quantity sheets to be included in the Department’s requests for bids or proposals for CMMR Services. Contractor shall also be responsible for the scheduling and coordination of all activities related to the CMMR Contractor’s work and any related requirements of the Department; provided, however, Contractor shall not be responsible for directing the means and methods of the CMMR Contractor in carrying out its work. Contractor’s costs in performing the services to be provided by Contractor under this Section 6.5.6 shall be included in the Initial Engineering Price or the Fixed Price Amount of the Section Completion Work Price, as applicable. Contractor shall not be entitled to a Change Order for impacts on Contractor’s cost or time of performance arising from the performance of the CMMR Services by the CMMR Contractor relating to Pre-Existing Hazardous Substances identified in studies and investigations described in Section 6.5.1; provided, however, Contractor shall be entitled to an extension of the Guaranteed Completion Date under any Section Supplement for a delay to the Critical Path which is directly due to the failure of any CMMR Contractor to perform services in a timely manner in accordance with its contract with the Department (which event shall constitute a Department-Caused Delay) to the extent provided in Article 19. Contractor shall be eligible for a Change Order with respect to Hazardous Substances that constitute a Differing Site Condition to the extent provided in Article 19. Contractor’s indemnifications set forth in Section 21.1 shall apply fully to Contractor’s acts and omissions in carrying out its responsibilities under this Section 6.5.6, but will not apply to acts or omissions of the CMMR Contractor. Department shall have the right to a Change Order decreasing the Fixed Price Amount in the event that Contractor or Department determines that any Work included in the Scope of Work (e.g. demolition or excavation) shall be undertaken by a CMMR Contractor rather than by the Contractor. The Change Order shall reduce the Fixed Price Amount in the amount of the cost to the Department of retaining a CMMR Contractor to perform such Work.
6.5.7 In the event that Department is unwilling to acquire any contaminated property, Contractor shall be eligible for a Change Order with respect to cost of redesign and working around the contaminated site or a time extension to the extent such work affects the Critical Path, to the extent provided in Article 19.

6.6 Acquisition Costs.

The amounts to be paid to a property owner in connection with a negotiated acquisition shall be paid from the ROW Allowance. Contractor shall identify each such recipient as the payee in the Draw Request and Certificate under Section 14.2.2 which requests funds for such purpose. Amounts to be paid to a property owner in connection with a condemnation action shall be paid by the Department directly as provided in Sections 6.3.1 and 6.3.3. Payment for such Project Right of Way acquisition costs shall be limited to the eligible expenses stated in Section 14.1.2.2 of the Section A Supplement and as specifically provided in any other Section Supplement. All other costs incurred by Contractor in connection with acquisitions shall be part of the Fixed Price Amount. Notwithstanding the foregoing, Contractor shall be responsible, at its own cost and expense, without any entitlement to reimbursement, for acquisition of any property or temporary easements or other property rights outside of the Project Right of Way limits which Contractor determines is necessary to accommodate its construction methods, or to facilitate temporary Utility Relocations.

6.7 Changes in Project Right of Way Limits.

Department’s Chief Engineer’s prior written consent is required for any changes in the project approved Right of Way limits as shown on the Right of Way Plans.

6.8 Residue Parcels.

Whenever indicated on the approved Right of Way Plans or when determined by Contractor during negotiation uneconomic residue parcels, to the extent possible by law, may, with the Department’s written approval, be acquired as part of the acquisition. To extent required by law, Contractor shall acquire residue parcels on behalf of the Department in the same manner as other parcels in the Right of Way are acquired hereunder. All residue parcels acquired in connection with the Project shall be conveyed to Department for management and disposal. These properties shall be the sole property of the Department and managed by the Department’s Property Management Section. Contractor shall at no time be allowed to sell any of these residue parcels. In addition, Contractor will be required to set up in RUMS all acquisition parcels that result in residue parcels. Department shall be responsible for maintaining a residual parcel inventory.

6.9 Record Documents

Contractor shall provide to Department a complete set of right of way conveyance documents indicating the date and recordation data for each tract or parcel, along with an annotated set of the approved Right of Way Plans.
ARTICLE 7. UTILITIES

This Article 7 sets forth provisions relating to relocation of Utilities. A preliminary survey of Utilities likely to be impacted by the work shall be performed by Contractor as part of the Initial Engineering Work. Contractor bears full responsibility for ascertaining the existence and exact location and size of all affected facilities.

7.1 Commencement of Utility Work.

Contractor shall commence Work relating to Utility Relocations for a Project Section promptly after issuance of the Notice to Proceed for Section Completion Work for such Project Section. Such work shall be performed in compliance with the other applicable provisions set forth herein.

7.2 Contractor’s Utility Relocations Obligations.

Contractor is responsible for causing all necessary Utility Relocations to occur in accordance with the CPM/Payment Schedule. Contractor shall comply with Title 56, Chapter 22, Section 56-570. Code of Virginia, in such efforts. Contractor shall obtain and process for payment final billings for any utility protection, adjustment, or relocation within one calendar year after the utility work has been completed. Contractor shall certify to Department that all eligible costs have been paid and there are no outstanding claims pending with a utility owner. Contractor shall cause the performance of the Utility Relocations (including the design of both horizontal and vertical alignments) to be consistent with the final design, such that the construction of the final design shall not require any further removal or relocation of such utilities, or any further installation of permanent protection structures therefor.

7.2.1 Identification of Utilities

Contractor shall be responsible for identifying all utilities affected by the proposed construction and shall establish if the utility has reimbursable rights, as outlined in Volume II of the Right of Way Manual of Instructions. Subject to Section 7.4.1, any necessary protection, adjustment or relocation required shall be ascertained and paid by Contractor.

7.2.2 Avoiding Utility Relocations

The location of utility facilities and potential impact of Utility Relocations of such facilities shall be evaluated in accordance with Department’s Utility Accommodation Policy and the Land Use Permit Manual in finalizing the design of the Project, with the following goals: (a) avoiding Utility Relocations to the extent practicable; (b) if a Utility Relocation is not reasonably avoidable, protecting the facility in place to the extent practical, and (c) otherwise minimizing the potential costs and delays relating to Utility Relocations to the extent practicable.

7.2.3 Relocation Plan

The Contractor shall prepare and implement a relocation plan for all affected Utilities in accordance with the CPM/Payment Schedule. Such plan shall comply with all requirements contained in Title 56, Chapter 22, Section 56-570 Code of Virginia and shall be submitted to and approved by Department Chief Engineer before commencement of construction work for affected Utilities.
7.2.4 Agreements with Utility Owners

Contractor shall enter into a written agreement with each affected Utility, if required, (see Volume II, Right of Way Manual of Instructions, for examples) providing for the appropriate protection, adjustment, or relocation of the utility facilities and setting forth the terms and conditions under which said work will be performed, the cost responsibility, and payments to be made therefor, provided that Department shall enter into any such agreement with an affected utility upon Contractor’s request if it would result in a Project cost savings and the form of agreement is acceptable to Department. Department will assist in negotiations with utility owners as reasonably requested by Contractor. Contractor shall have no right to enter into any agreement with a Utility Owner which purports to bind Department to its terms without the Department’s prior written consent. In no event shall any agreement with a utility owner be deemed to modify the terms of this Contract, and in the event of any conflict between the terms of any such agreement and the terms of the Contract Documents, the Contract Documents shall prevail as between Department and Contractor.

7.2.5 Coordination of Utility Relocation

Contractor shall be responsible for coordinating the Work with the various utilities. The resolution of any conflicts between utilities and the construction of the Project shall be the responsibility of Contractor.

7.3 Payment for Utility Relocation.

7.3.1 The costs of Utility Relocations shall be paid by the Contractor and are included in the Fixed Price Amount, except to the extent such Utility Relocations are a result of Differing Site Conditions to the extent provided in Article 19.

7.4 Obligations of Department.

7.4.1 To the maximum extent available, Department shall provide to Contractor the benefit of any provisions in permits, easements and agreements affecting the Project which require the holders thereof to relocate at the Utility Owner’s expense.

7.4.2 Department shall, at its sole cost, issue land use permits for utilities needing to cross the Project Right of Way and shall ensure that the installations are in compliance with Department’s Land Use Permit Manual.
ARTICLE 8. PRICING DOCUMENTS

8.1 Definition

“Pricing Documents” include documentary information demonstrating the basis of the Fixed Price Amount for each Project Section and Change Orders adjusting the Fixed Price Amount for each Project Section adequate to enable an understanding and interpretation of how Contractor arrived at the Fixed Price Amount and Change Orders adjusting the Fixed Price Amount including:

(i) itemization of the estimated costs of performing the Work separated into usual and customary items and sub-items (as applicable) to present a detailed estimate of costs, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, subcontract costs, plant and equipment, indirect costs, contingencies, mark-up, overhead and profit; and

(ii) all assumptions, detailed quantity takeoffs, rates of production and progress calculations, and quotes from Subcontractors and Suppliers used to arrive at the Fixed Price Amount.

8.2 Exclusions from Pricing Documents

The Pricing Documents shall not include documents showing costs of work in similar projects or individual estimates supporting a reconciled pricing by Contractor.

8.3 Format of Pricing Document

Representatives of the Department and Contractor will meet at a mutually agreeable time to verify the completeness and legibility of the Pricing Documents, after which the Pricing Documents will be sealed jointly by the representatives of the Department and Contractor.

In the event that, following the initial organization, it becomes apparent that the Pricing Documents do not include the information required under Section 8.1, Contractor shall submit to the escrow agent described in Section 8.4.1 supplemental information to make the documents complete within ten (10) Days after written request by Department which supplemental information shall be date stamped and labeled to identify it as supplemental Pricing Documents information.

8.4 Delivery of Pricing Documents into Escrow

8.4.1 Fixed Price Amount. Within 30 Days after execution and delivery of the Section Supplement for each Project Section, Contractor shall deliver to an escrow agent mutually agreeable to Contractor and Department (as used in this Section 8, the “Escrow Agent”) the Pricing Documents related to the Fixed Price Amount for such Project Section.

8.4.2 Change Orders. For Change Orders that include an adjustment to the Fixed Price Amount, within 30 Days after execution of such Change Orders, Contractor shall deliver to the Escrow Agent the Pricing Documents related to such Change Orders.

8.4.3 Certification. With each submission of Pricing Documents to the Escrow Agent, Contractor shall submit a certification signed by an authorized officer, addressed to Department,
certifying to the best of his or her knowledge that the Pricing Documents were personally examined by
the person signing the certificate, who determined that they comply with all applicable requirements of
Sections 8.1 and 8.2.

8.5 Review of Pricing Documents

8.5.1 Joint Review. Upon ten (10) Days written notice, the Pricing Documents shall be
available during business hours for joint review by Department and Contractor in connection with
resolution of disputes arising under this Agreement, and, if mutually agreed, in connection with
negotiation of Change Orders. If any party persistently fails to attend a noticed time for review, then the
other party or parties shall be entitled to submit the issue of access to pricing documents to the Dispute
Review Board. Department shall be entitled to make and retain copies of Pricing Documents as each
deems appropriate in connection with any such matters, provided that Department has executed and
delivered to Contractor a confidentiality agreement in a form to be mutually agreed upon consistent with
Section 14.2 of the Comprehensive Agreement.

8.5.2 No Impact on Discovery. The provisions contained in this Section 8.5 shall in no way
be deemed a limitation on discovery rights with respect to the information contained in the Pricing
Documents.

8.6 Proprietary Information

The Pricing Documents are, and shall always remain, Contractor’s property subject to the rights to review
the Pricing Documents set forth in Section 8.5. Department acknowledges that Contractor considers the
Pricing Documents to constitute trade secrets or proprietary information. This acknowledgment is based
upon Department’s understanding that the information that is or will be contained in the Pricing
Documents is not known outside Contractor’s business, is known only to a limited extent and by a limited
number of its employees, is safeguarded while in its possession, and may be valuable to its business
strategies, assumptions and intended means, methods and techniques. Department further acknowledges
that Contractor expended money in developing the information included in the Pricing Documents and
further acknowledges that it would be difficult for a competitor to replicate the information contained
therein. If the Pricing Documents become subject to a request for public disclosure, the provisions of
Section 14.2 of the Comprehensive Agreement shall apply hereto as if fully set forth herein.

8.7 Return of Pricing Documents

The Pricing Documents shall be maintained in escrow until all of the following have occurred: (i) 180
Days have elapsed from the occurrence of all the following (i) termination of this Agreement, (ii) all
disputes regarding this Agreement related to the Project Section have been resolved, and (iii) final
payment of all amounts due Contractor under the related Section Supplement has been made and
accepted. At such time, Department and all parties or persons who have received copies of all or a
portion of the Pricing Documents through them shall return all copies of the Pricing Documents to the
Escrow Agent for destruction, and Escrow Agent shall return the original Pricing Documents to
Contractor.
ARTICLE 9. TRAFFIC CONTROL AND RESTRICTIONS

9.1 Construction Traffic Management Plan

9.1.1 Contractor shall prepare and provide to Department a Construction Traffic Management Plan approved by Department as a condition precedent to commencing construction Work for any Project Section. The Construction Traffic Management Plan shall be prepared and implemented to promote safe and efficient operation of adjacent public transportation facilities and State Highways at all times during the course of construction of any Project Section.

9.1.2 The Construction Traffic Management Plan shall comply with all applicable Contract Documents, including the Section of the Scope of Work entitled "Maintenance of Traffic" and Sections 104.04, 107.07 and 107.10 of the Standard Specifications as set forth in Appendix 9.

9.2 Traffic Control

Subject to Department oversight, Contractor shall provide or cause to be provided traffic management and operations services in compliance with and to the extent required of Contractor by the approved Construction Traffic Management Plan.
ARTICLE 10. APPLICABLE LAW AND REGULATORY APPROVALS

10.1 Obligation to Comply with Laws, Regulations and Ordinances and Regulatory Approvals

Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws, Regulations and Ordinances and the conditions of all Regulatory Approvals prior to entering into this Contract. Contractor shall comply with, and shall ensure that all Subcontractors comply with, all applicable Laws, Regulations and Ordinances and the conditions and requirements of all Regulatory Approvals, including, survey work, wetland and other impact mitigation, asbestos abatement, water and air quality analyses and any applicable consultation and commitments required by the Endangered Species Act of 1973, 16 U.S.C. Section 1531 et seq.

10.2 Obligation to Obtain Regulatory Approvals

10.2.1 Contractor has no reason to believe that any Regulatory Approval required to be obtained by Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. Prior to performing any construction, equipping or installation of any Project Section or any portion thereof, Contractor shall obtain all Regulatory Approvals required in connection therewith; provided, however, that Department shall not prohibit commencement of any such activity where Contractor has satisfied all other requirements and conditions set forth in this Contract, and either:

(a) Contractor lacks a Regulatory Approval (other than from Department and other than the lead agency under NEPA, if applicable) but instead is contesting diligently and in good faith the validity, applicability or terms of such Regulatory Approval through appropriate proceedings, has posted any bonds or other undertaking which may be lawfully required to commence and proceed with such activity without such Regulatory Approval and certifies in writing to Department that it will obtain and abide by such Regulatory Approval if and when it is upheld; or

(b) a Regulatory Approval not yet obtained is not necessary in order to commence such activity and can be expected to be issued in due course during construction.

10.2.2 As of the date of execution of this Contract, no regulatory Approvals, other than the EIS, are required to be issued in the name of the Department. In the event that any other Regulatory Approvals required to be obtained by Contractor under Section 10.2.1 must formally be issued in the name of Department, Contractor shall undertake all efforts to obtain such approvals subject to Department’s reasonable cooperation with Contractor, including execution and delivery of appropriate applications and other documentation in form approved by Department.

10.2.3 Except as provided in Section 10.2.4, prior to Final Acceptance of a Project Section, Contractor shall obtain all Regulatory Approvals required to open the Project Section for normal use and operation. Contractor shall obtain all such Regulatory Approvals in the name of Department, provided that if doing so is impossible or impracticable, then Contractor shall obtain a transferable Regulatory Approval and transfer and assign the same in writing to Department prior to Final Acceptance. Contractor shall deliver to Department, promptly after Contractor's receipt, the original of each such Regulatory Approval.

10.2.4 The Department’s CMMR Contractor shall be responsible for obtaining any and all Regulatory Approvals associated with the CMMR Services performed by the CMMR Contractor with
respect to work involving Pre-Existing Hazardous Substances ("CMMR Hazardous Substance Regulatory Approvals") prior to Final Acceptance of any Project Section.

10.3 Payment for Regulatory Approvals

Except as to CMMR Hazardous Substance Regulatory Approvals, Contractor shall pay all charges and fees and shall not be entitled to any time extension incident to obtaining any modifications to Regulatory Approvals and all new Regulatory Approvals and for any changes in the Work arising there from, provided that in the event a modification to a Regulatory Approval or a new Regulatory Approval is necessitated by a Directed Change, a Force Majeure event or Differing Site Condition, Contractor shall receive compensation and/or a time extension for obtaining such modification or new Regulatory Approval and for any changes in the Work resulting there from pursuant to the Change Order covering the Directed Change, Force Majeure event or Differing Site Condition (but only to the extent eligible under Section 19.4.1), as appropriate.

10.4 Acknowledgment Regarding EIS

Contractor acknowledges and agrees that constraints established by the EIS were based on certain assumptions regarding the alignment of the Project, and agrees that the Project can be designed and constructed within the constraints identified in the Contract Documents.
ARTICLE 11. WARRANTIES

11.1 Warranties

11.1.1 Contractor warrants to Department that (a) all design Work performed pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State, (b) the Project shall be free of Defects (except to the extent such Defects are inherent in prescriptive specifications in the Standard Specifications), (c) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (d) the Work shall meet all of the requirements of the Contract Documents. The Project shall be fit for use for the intended function. The Warranties shall not include routine maintenance items such as periodic rework of bridge joints, restriping and other like work required as a result of normal wear and tear.

11.1.2 The Warranties with respect to any Project Section shall commence on the Final Acceptance Date of such Project Section, or with respect to any overcrossings or undercrossings put into service prior to the Final Acceptance Date in accordance with Section 18.1, the date of acceptance of such portions. The Warranties shall remain in effect for a five-year period. If any of the Work fails to meet the standards set forth in Section 11.1.1 at any time within the applicable warranty period, then Contractor shall correct such Work to meet the standards of Section 11.1.1, and repair (to such standards) any damage to the Project or other property of Department caused by the failure of the Work to meet the standards set forth in Section 11.1.1, even if the performance of such corrective work or repairs extends beyond the stated warranty period.

11.1.3 Within seven (7) Days of receipt by Contractor of notice specifying a failure of any of the Work to satisfy Contractor’s Warranties, Department will consult with Contractor to determine when and how Contractor shall remedy such violation; provided, however, that in case of an emergency requiring immediate curative action, Contractor shall implement such action as it deems necessary and shall notify Department of the urgency of an expedited decision by the close of the following Business Day. Contractor and Department shall agree on such remedy as soon as reasonably practicable. If Contractor does not use diligent efforts to proceed promptly to effectuate such remedy within the agreed time, or should no such agreement be reached within such 7-Day period (or immediately, in the case of emergency conditions), Department, after notice to Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Contractor.

11.1.4 Contractor shall be responsible for obtaining any required encroachment permit from Department in connection with any such corrective or repair Work. Contractor shall bear all costs of correcting any rejected or defective Work, including additional testing and inspections, and shall reimburse Department or pay Department’s direct expenses of regulating traffic and protecting the public and third party expenses made necessary thereby within 30 Days after Contractor’s receipt of invoices therefor.

11.2 Extension of Warranties

Contractor’s Warranties shall apply to all Work re-done pursuant to the terms of this Contract. The Warranties shall last as to each re-done element of the Work until the later of (a) one year after acceptance by Department of any re-done Work or (b) expiration of the applicable Warranty period as set forth in Section 11.1.2.
11.3 Subcontractor Warranties

11.3.1 Without in any way derogating from Contractor’s own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, Contractor shall obtain from all Subcontractors and cause to be extended to Department appropriate representations, warranties (for periods at least co-extensive in duration with Contractor’s Warranties for such Work), guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) shall run directly to and be jointly and severally enforceable by Contractor and Department and their respective successors and assigns. Contractor hereby assigns to Department all of Contractor’s rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Contractor from any of its Subcontractors.

11.3.2 Upon receipt from Department of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, covenant, guarantee or obligation, Contractor shall be responsible for enforcing in the name of and on behalf of Department, if so directed, or performing any such representation, warranty, covenant, guarantee or obligation, in addition to Contractor’s other obligations hereunder. Contractor’s duty to enforce Subcontractor’s warranties and obligations under this Section 11.3.2 shall commence at the time such representation, warranty, guarantee or obligation is furnished and shall continue until the expiration of Contractor’s Warranty (including extensions for redone Work). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Contractor if such cost is covered by such a Warranty and Contractor shall be required to replace or repair defective or damaged equipment, material or workmanship furnished by Subcontractors.

11.4 Assignment of Warranties

Contractor’s Warranties (including warranties for re-done Work) and all Subcontractor warranties shall be assignable by Department without approval by Contractor or any Subcontractor or vendor, which assignment shall be effective upon delivery of notice to Contractor of the assignment.

11.5 Damages for Breach of Warranty

Contractor's liability to Department for damages resulting from any breach of an express warranty (including warranties made by Subcontractors) shall be limited to all those costs reasonably incurred by Department in effecting the remedy described in Section 11.1.2 itself or through a third party, including the costs described in Section 11.1.4. This limitation of liability shall not apply to liabilities incurred by Contractor arising out of its obligation to indemnify, defend and hold each State Indemnitee harmless from third party Claims under Section 21.1 or to the extent covered by insurance required hereunder.

11.6 Exclusive Remedy

This Article 11 and Section 14.4 set forth Department's exclusive remedies against Contractor, and Department hereby waives all other remedies, regarding defects or deficiencies in the Work, whether patent or latent or arising in contract, tort (including negligence) or pursuant to other legal theory, except (a) Contractor's obligation to indemnify, defend and hold each State Indemnitee harmless from third party Claims under Section 21.1 and (b) defects and deficiencies in the Work resulting from the fraud or deceit of any Contractor Party (excluding Subcontractors). Contractor makes no other warranties, express or implied, relating to the quality of the Work.
11.7 Habitat and Landscaping Maintenance

Contractor shall maintain in a growing condition all newly established plantings, seedings and soddings furnished under the Contract Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement in accordance with the Standard Specifications throughout an establishment period that shall commence at initial planting and shall end one year after the planting date. Provided, however, Contractor shall be required to replace any such growing plantings destroyed by an event of Force Majeure, but such replacements shall be at Department’s cost.
ARTICLE 12. RECORDS

12.1 Maintenance of, Access to and Audit of Records

Contractor shall maintain a complete set of all books and records prepared or employed by Contractor in its management, scheduling, cost accounting and otherwise with respect to the Project. Contractor shall grant to Department such audit rights and allow Department such access to and the right to copy such books and records as Department may request in connection with Work to be performed on a reimbursable cost basis, issuance of Change Orders, the resolution of disputes and such other matters as Department reasonably deems necessary for purposes of verifying compliance with this Contract and applicable law.

12.1.1 Where the payment method for any Work is on a unit-priced basis, such examination and audit rights shall include all books, records and other data of Contractor for the purpose of evaluating the accuracy of Contractor's designations of quantities.

12.1.2 Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If audit indicates Contractor has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

12.1.3 For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, Department and its representatives have the right to examine all books, records, documents and other data of Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

12.1.4 Nothing contained in this Contract shall in any way limit the constitutional and statutory powers, duties and rights of elected state officials, including the independent rights of the State Auditor of Public Accounts, in carrying out his or her legal authority.

12.1.5 No audit rights shall extend to the make-up of any lump sum amount or unit price once the parties have agreed upon such amount or price.

12.1.6 Contractor shall require each Subcontractor to comply with the requirements applicable to Contractor set forth in this Section 12.1.

12.2 Retention of Records

Contractor shall maintain all records and documents relating to Work related to any Project Section under this Contract (including copies of all original documents delivered to Department) for five years after the Final Acceptance Date of such Project Section or termination date of this Contract, as applicable, and shall notify Department where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Contractor Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and
Contractor Claims have been finally resolved and Contractor shall maintain all documents relating to acquisition of the Project Rights of Way no less than three years after any negotiated conveyance or after issuance of a final judgment with respect to any property acquired by condemnation. Records to be retained include all books and other evidence bearing on Contractor’s costs and expenses under the Contract Documents. Contractor shall make these records and documents available for audit and inspection to Department, at Contractor’s office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to Contractor). If approved by Department, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

12.3  Public Records

Requirements relating to public records are set forth in Section 14.2 of the Comprehensive Agreement.

12.4  Reporting Requirements

12.4.1 Not later than 30 Days after the end of each calendar quarter, Contractor shall prepare and deliver to Department the following reports, in a form reasonably satisfactory to Department:

(a) a written narrative report on the progress of design, permitting, acquisition, Utility Relocations and construction of the Project and Project Right of Way since the immediately preceding report, or, if there was no preceding report, from the inception by Contractor of such Work, describing in reasonable detail all significant activities concerning design, Regulatory Approvals, new contracts and subcontracts with contractors, subcontractors, vendors and suppliers identifying the parties, scope and, for Work thereunder to be paid on a time and materials basis, amount, construction and construction progress and discovery and correction of defects. Such report shall include a discussion of the CPM/Payment Schedule and Contractor’s compliance therewith, of any new or continuing delays, material matters which may affect the future performance of Contractor’s obligations under the Contract Documents, and the causes thereof and a summary of all new changes to the Plans and Specifications. Such report also shall describe any damage or destruction and restoration work and revenue information (such as but not limited to insurance awards) relating to any such occurrence; and

(b) a written narrative report of any disputes with Contractor or claims, actions or assertions against Contractor, the Project or Project Right of Way by any Governmental Person, any general contractor, any architect or engineer, any subcontractors, vendors or suppliers or any other Person, or of Lien claims or stop notices filed or threatened to be filed by any Person. Such report shall include but not be limited to a description of the nature of the dispute, claim, action, assertion, Lien or notice, the amount in dispute or claimed, copies of any Lien notice, stop notice, complaint, demand or other pertinent documents which Department requires, availability of insurance and insurance defense, and actions taken and contemplated to defend against, settle or remove the dispute, claim, action, assertion, Lien or notice.

12.4.2 Contractor shall report to Department (a) not later than 24 hours after the occurrence thereof, any significant damage or destruction to the Project, and (b) at least 48 hours before commencement thereof, any planned work (other than emergency repairs) to repair or remedy such damage or destruction.

12.4.3 Contractor shall obtain Department’s prior written approval of all proposed press releases and other statements concerning the Project before they are made available generally by Contractor to the public or media.
12.4.4 Contractor shall furnish or cause to be furnished to Department copies of all financial audit reports distributed by Contractor other than those limited to internal distribution within Contractor or its members.

12.4.5 Contractor shall furnish or cause to be furnished to Department such other documents, reports and information relating to the Project as Department may reasonably request from time to time.

12.5 NOT USED

12.6 Subcontractor Pricing Documents

Contractor shall require each Subcontractor whose Subcontract price equals or exceeds $5,000,000 to submit to Contractor a copy of all documentary information used in determining the Subcontract price immediately prior to executing the Subcontract or change orders or amendments thereto. Each such Subcontract shall include a representation and warranty from the Subcontractor stating that the submitted documentary information constitutes all the documentary information used in the determination of its price. Each Subcontract with a Subcontractor whose Subcontract price is less than $5,000,000 shall require the Subcontractor to preserve all documentary information used in determination of its price and to provide such documentation to Contractor and/or Department in connection with any claim exceeding $250,000 made by such Subcontractor. Contractor shall deliver copies of all such Subcontractor pricing documents to the Escrow Agent in accordance with Article 8.

12.7 Title to Work Product

Provided Department has made payment to Contractor therefor to the extent required by this Contract, all Work Product shall become the property of Department upon Contractor’s preparation or receipt thereof and Contractor shall promptly deliver possession thereof to Department.

12.8 Equipment Warranties

Contractor shall procure equipment for traffic management functions and systems under vendor contracts which do not impair, qualify, limit or disclaim in any manner the implied warranties of merchantability and fitness for the particular purpose intended. Contractor shall make such implied warranties available for the benefit of Department. Contractor shall not itself be liable to Department for any such implied warranties (provided that this limitation shall in no way affect the scope of any of Contractor’s warranties hereunder).
ARTICLE 13. CRITICAL PATH METHOD SCHEDULE

13.1 CPM/Payment Schedule

Contractor shall prepare and maintain a CPM/Payment Schedule for the Initial Engineering Work and the Section Completion Work for each Project Section using the critical path method of scheduling on a system reasonably acceptable to Department. This schedule shall be used to manage the design and construction of the Project and as the basis for determining the amount of monthly progress payments to be made to Contractor and shall be in sufficient detail to determine progress, to monitor construction activity and to identify and avoid delays.

13.2 Allocation of Contract Price

Contractor shall allocate the total Initial Engineering Price and Section Completion Work Price for each Project Section among the activities scheduled on the CPM/Payment Schedule for such Initial Engineering Work or Section Completion Work so that each activity has a price which accurately shows the amount payable to Contractor for such activity. The price for each activity shall account for any limitations relating to payment for specific activities contained herein, including qualification for payment from federal funds. The CPM/Schedule shall also be consistent with the Maximum Payment Curve attached as an attachment to the CPM/Payment Schedule for the Initial Engineering Work or as provided in the Section Supplement. For Work which is the subject of a Change Order, the schedule shall be updated to reflect the approved Change Order. The sum of the prices of all activities in the CPM/Payment Schedule for such Work shall equal the total Contract Price for such Work. Once the initial CPM/Payment Schedule for such Work has been approved, no changes to any allocated amount may be made without Department approval.

13.3 Initial CPM/Payment Schedule; Monthly Updates

The CPM/Payment Schedule for the Initial Engineering Work shall be approved by the Department prior to the issuance of the Notice to Proceed for Initial Engineering Work. Contractor shall provide Department with a copy of an initial CPM/Payment Schedule for the Section Completion Work for each Project Section on or before the issuance of the Notice to Proceed for Section Completion Work. Contractor shall thereafter update the schedule on a monthly basis. The term “CPM/Payment Schedule” as used herein shall mean the most recent schedule provided hereunder that has been approved by Department.

13.4 CPM/Payment Schedule Requirements

Each CPM/Payment Schedule shall be in a paper and/or electronic medium accompanied by a management level summary, as may be requested by Department. Periodic construction meetings shall be held by Contractor with its consultants and subcontractors to coordinate the Work, update the CPM/Payment Schedule, provide information and resolve potential conflicts. The CPM/Payment Schedule for Section Completion Work shall, among other things, provide that Final Acceptance of the related Project Section shall be achieved by the Guaranteed Completion Date for such Project Section, include a designation of any Construction Segments and be subject to Department’s reasonable approval. In the event of any Critical Path delay in excess of one month, Contractor shall prepare and provide to Department a recovery plan and revised schedule.
ARTICLE 14. COMPENSATION

14.1 Contract Price

14.1.1 Initial Engineering Price

As full compensation for the Initial Engineering Work, and subject to the limitations contained herein, Contractor shall be paid the sum of $78,000,000 (such amount, as it may be adjusted from time to time as provided herein, is referred to herein as the "Initial Engineering Price"). The Initial Engineering Price shall be paid in accordance with Section 14.2. The Initial Engineering Price shall be increased by the actual cost of the Professional Liability Insurance required to be obtained under Section 22.2, provided that, (i) the cost of such insurance is equal to the lowest of at least three quotes obtained by Contractor from qualified insurers, and (ii) Contractor makes available for review by the Department all applications for such insurance (except any confidential or proprietary information contained therein) and all quotes obtained by Contractor. In the event that the quoted cost is unacceptable to the Department, the parties may mutually agree to change the requirements for such insurance set forth in Section 22.2 or the Department may terminate this Contract in accordance with Article 26. Except as set forth in this Section 14.1.1, the Initial Engineering Price shall be increased only in accordance with Article 19.

14.1.2 Contract Price for Section Completion Work

The Contract Price for the Section Completion Work for each Project Section shall be as set forth in the Section Supplement for such Project Section.

14.2 Payments

Payment to Contractor of the Contract Price shall be made as follows:

14.2.1 Source of Payments

Prior to the issuance of the Notice to Proceed for Section A Completion Work, Department shall be obligated to make payments due and owing hereunder solely from the funds appropriated to the Department and identified in the Section A Preliminary Plan of Finance--Construction Period Cash Flows attached as Exhibit F to the Comprehensive Agreement. Subsequent to the issuance of the Notice to Proceed for Section Completion Work for Sections A, B, C or D, Department shall be obligated to make payments due and owing under the related Section Supplement solely from the funds appropriated to the Department and identified in the related Section Plan of Finance attached as an Appendix to the related Section Supplement.

14.2.2 Delivery of Draw Request and Certificate

On or about the 15th Day of each month, Contractor shall submit to Department five (5) copies of a Draw Request and Certificate (the "Request") in the form attached hereto as Appendix 3, with no additions or deletions other than those approved by Department. Each Request shall be executed by a designated representative of Contractor appointed by Contractor to have such authority in accordance with Section 24.1. No Request shall be considered complete unless it (a) describes the status of completion as it relates to the CPM/Payment Schedule, (b) sets forth the related payments which are then due in accordance with the CPM/Payment Schedule, as of the end of the 10th Day of the month, (c) includes the required attachments thereto in form approved by Department, (d) includes a written certificate from Contractor and each Subcontractor to be paid pursuant to the subject Request that all prior
invoices have been paid in full except for Retainage and amounts in dispute, (e) in the case of amounts to be paid on a unit price basis, includes invoices, receipts or other evidence establishing the number of units delivered and (f) in the case of amounts invoiced on a time and materials basis, includes all supporting documentation described in Section 19.7. Within ten (10) Days after Department’s receipt of the Request, Department will review the Request and all attachments thereto for conformity with all requirements of the Contract Documents, and shall notify Contractor of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Request. Contractor may include such disapproved amounts in the next month’s Request after correction of the deficiencies noted by Department (all such disapproved amounts shall be deemed in dispute unless otherwise agreed). Approved invoiced amounts shall be paid within thirty (30) Days of the date of submittal of the approved invoice.

14.2.3 Maximum Payment Curve

Contractor shall have no right to payment in any amount, which aggregated with all other amounts paid under this Contract exceeds the Maximum Payment Curve applicable to the Work for which any Draw Request is submitted.

14.2.4 Payment

In no event shall Contractor be entitled to payment for any activity eligible for payment from the Fixed Price Amount portion of the Contract Price in excess of the demonstrated percentage of completion of such activity.

14.2.5 Continued Performance During Disputes

Subject to Contractor's right to suspend performing Work to the extent permitted under Section 25.4, failure of Department to authorize payment of any disputed amounts shall not postpone, alleviate, diminish or modify in any respect Contractor’s obligation to perform under the Contract Documents, including Contractor’s obligation to achieve Final Acceptance and perform all Work in accordance with the Contract Documents, and Contractor shall not cease or slow down its performance under the Contract Documents on account of any such amount. Any dispute between Contractor and Department regarding such payment shall be resolved pursuant to Article 27.

14.2.6 Retainage

14.2.6.1 If Contractor’s progress on Section Completion Work for a particular Project Section falls behind schedule, Department may in its sole discretion commence withholding funds (“Retainage”) from the current and each future payment to be made to Contractor as described in this Article 14, and the provisions of Article 14 of the related Section Supplement. For purposes of this Section 14.2.6, the term “behind schedule” shall mean that Contractor’s then current accepted CPM/Payment Schedule shows that Contractor’s progress is insufficient to complete the Section Completion Work for such Project Section by the Guaranteed Completion Date. The Retainage withheld by the Department shall be an amount equal to 5% of the invoiced amount for all Section Completion Work for such Project Section (except Project Right of Way Work payable from the ROW Allowance) performed during the current and each future payment period during which the Contractor is behind schedule with respect to such Project Section. After Contractor’s progress is no longer behind schedule, or the Department has withheld an amount for Retainage equal to two and one-half percent (2-1/2%) of the portion of the total Fixed Price Amount for such Project Section (increased by any Change Orders), Department shall cease withholding Retainage from future payments owing to Contractor hereunder with
respect to such Section Completion Work, provided that Retainage previously withheld will not be released on future payments except in accordance with Sections 14.2.6.2 and 14.2.6.3.

14.2.6.2 Retainage, if any, withheld in accordance with Section 14.2.6.1 shall be held by the Department unless, within ten (10) Days after the issuance of the Notice to Proceed for Section Completion Work, the Contractor elects, in writing, for such Retainage to be deposited by the Department into an escrow account and Contractor delivers to the Department an executed escrow agreement substantially in the form attached hereto as Appendix 12. The Retainage with respect to any Section Completion Work shall be held by Department (or remain in escrow) until all events described in Section 14.2.6.3 have occurred, but no sooner than 30 Days after the Final Acceptance Date of the Project Section. At such time Contractor's requisition to Department under Section 14.2.2 may include a draw (or a request for release from escrow) of all Retainage (including earnings thereon) other than amounts applied to the payment of any Liquidated Damages and other amounts owing by Contractor or which Department deems advisable, in its reasonable discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, reconciliation of all eminent domain cases, any amounts due Department under Section 11.1.4, or the cost of any uncompleted Work. Final payment (or release from escrow) of such Retainage (including earnings thereon) not applied to Liquidated Damages, or to any amounts due Department under Section 11.1.4 shall be made upon (a) Contractor’s showing, to Department’s reasonable satisfaction, that all such matters have been resolved, including delivery to Department of a certification that there are no outstanding existing or threatened claims, Liens or stop notices of any Subcontractor, Supplier or laborer or claims by third parties, including utility owners, with respect to the Work and all eminent domain cases have been reconciled or (b) Contractor's showing, to Department's satisfaction in Department's sole discretion, that Department is adequately protected from any such unresolved matters.

14.2.6.3 No portion of the Retainage shall be released unless and until all of the following conditions have been met: (a) Liquidated Damages shall not then be payable to Department; (b) Contractor shall have established to Department’s reasonable satisfaction that Liquidated Damages are not anticipated to be payable to Department; (c) Contractor shall have applied in writing for such release; and (d) such release shall have been approved in writing by Department.

14.2.6.4 No Retainage shall be withheld from Initial Engineering Work for any reason.

14.2.7 NOT USED

14.2.8 Unincorporated Materials

Department will approve payment for material not yet incorporated in the Work only under the following circumstances:

14.2.8.1 Department will give consideration to requests for payment for materials and equipment stored off-Site on a case-by-case basis, subject to the following conditions precedent:

(a) Contractor shall provide Department with at least 40 Days prior notice of Contractor’s plan to request payment for off-Site stored materials and equipment. Such request shall include a certified description of the off-Site location, a listing of all materials and equipment covered by the request, the individual value of the materials and equipment, the status of the fabrications of the material and/or equipment and the required dates of delivery at the Site. The statement shall be submitted on forms furnished by Department and shall be accompanied by invoices or other documents that will verify the material's cost. Following the initial submission, Contractor shall submit to Department a monthly certified update of the itemized inventory statement. The updated inventory statement shall
show additional materials received and stored with invoices or other documents and shall list materials removed from storage since the last certified inventory statement, with appropriate cost data reflecting the change in the inventory. If Contractor fails to submit the monthly certified update within the specified time frame, Department will deduct the full amount of the previous statement from the invoice. At the conclusion of the Project, the cost of material remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

(b) Evidence of insurance coverage of the stored material and equipment and related transit, including a loss-payable clause endorsement to Contractor’s insurance policy providing payment to Department in the event of loss of the specified stored materials and equipment.

(c) Such other documentation satisfactory to Department to establish Department’s title to such material and equipment or otherwise protect Department’s interest.

14.2.8.2 Department will review the documentation for completeness and accuracy. If the documentation presented does not satisfy the aforementioned conditions precedent, or if for any other reason Department is not satisfied, in its sole discretion, that Department’s interest is fully protected, the request for payment for stored materials shall be denied.

14.2.8.3 Department specifically reserves the right to discontinue payment for material or equipment stored off-Site at any time for any reason during the course of the Work.

14.2.8.4 Contractor shall bear all costs of Department associated with inspection of off-Site materials stored outside of the State.

14.2.8.5 Following payment therefor, all such materials so accepted shall become the property of Department. Contractor at its own expense shall promptly execute, acknowledge and deliver to Department proper bills of sale or other instruments in writing in a form acceptable to Department conveying and assuring to Department title to such material included in any invoice, free and clear of all Liens. Contractor at its own expense shall conspicuously mark or paint such material as the property of Department, shall not permit such materials to become commingled with non-Department-owned property and shall take such other steps, if any, as Department may require or regard as necessary to vest title to such material in Department free and clear of Liens.

14.2.8.6 Payment for material furnished and delivered as indicated in this Section 14.2.8 will not exceed the amount paid by Contractor as evidenced by a bill of sale supported by paid invoice.

14.2.8.7 Payment for material furnished and delivered as indicated in this Section 14.2.8 shall be in accordance with the following terms and conditions:

14.2.8.7.1 Structural Units

An allowance of 100% of the cost to Contractor for structural steel materials for fabrication may be made when such material is delivered to the fabricator and has been adequately identified for exclusive use on the Project. An allowance of 100% of the cost to Contractor for superstructure units, may be made when they have been fabricated. Prior to the granting of such allowances, the structural steel materials and fabricated units shall have been tested or certified and found acceptable to the QA Manager and shall have been stored in accordance with the requirements specified herein. Allowances will be based on invoices, bills, or the estimated value as approved by Department.
14.2.8.7.2 Other Materials

For reinforcing steel, aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable material, an allowance of 100% of the cost to Contractor for materials, may be made when such material is delivered and stockpiled or stored in accordance with the requirements specified herein. However, no allowance will be made for cement, seed, plants, fertilizer, and other perishable material. Prior to the granting of such allowances, the material shall have been tested and found acceptable to the QA Manager. Allowances will be based on invoices, bills, or the estimated value of the material as approved by Department and will be subject to the Retainage provisions of Section 14.2.6.

14.2.8.7.3 Excluded Items

No allowance will be made for fuels, form lumber, falsework, temporary structures, or other work that will not become an integral part of the permanent construction.

14.2.8.7.4 Storage

Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored materials are lost or become damaged, Contractor shall repair or replace them. Material included in an invoice but which is subsequently lost, as determined by Contractor, or which is damaged or unsatisfactory, as determined by Department, shall be deducted from succeeding invoices.

When it is determined to be impractical to store materials within the limits of the Project, Contractor may obtain approval for storage on private property or, for structural units, on the manufacturer's or fabricator's yard. Requests for payment allowance for such material shall be accompanied by a release from the owner or tenant of such property or yard agreeing to permit the removal of the materials from the property without cost to the State.

14.2.9 Equipment

Department shall not pay for direct costs of equipment used in constructing the Project. Payment for such equipment, whether new, used or rented, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirement of Section 19.5.2.1(c).

14.2.10 Payment for Work Scheduled to be Performed After Final Acceptance

Payment for habitat and landscape establishment and other Work scheduled to be performed after the Final Acceptance Date of a Project Section shall be made based on progress and shall not be subject to Retainage.

14.3 NOT USED

14.4 Offset; Reduction; Waiver

14.4.1 Department shall have the right to deduct any amount owed by Contractor to Department under the express terms of the Contract Documents, including Liquidated Damages and any amounts owing under Sections 11.1.3, 14.2.8.7.4 and Article 25, from any amounts owed by Department.
to Contractor including any progress payments payable under Section 14.2, and Retainage (including earnings thereon) which may be payable by Department to Contractor pursuant to Section 14.2.6.

14.4.2 The failure by Department to deduct any sums owing by Contractor to Department, from any amount owing by Department to Contractor shall not constitute a waiver of the right to recover such sums or to deduct such funds from future amounts owing by Department to Contractor. Permitting or requiring Contractor to continue and finish the Work or any part thereof after the Guaranteed Completion Date shall not act as a waiver of Department’s right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to Department.
ARTICLE 15. NOT USED
ARTICLE 16. QUALITY ASSURANCE AND QUALITY CONTROL

Contractor shall have full responsibility for quality assurance and quality control for the Project, including provision of and compliance with a Quality Assurance and Control Inspection Program meeting all requirements contained in Attachment B to the Scope of Work.
ARTICLE 17. TIME FOR COMPLETION

17.1 Time of Essence

Time is of the essence of this Contract.

17.2 Guaranteed Completion of each Project Section

17.2.1 Deadlines for Final Acceptance

The Guaranteed Completion Date for Final Acceptance of each Project Section shall be as set forth in the Section Supplement for such Project Section.

17.2.2 No Time Extensions

Except as otherwise specifically provided in Article 19, Department shall have no obligation to extend the Guaranteed Completion Date and Contractor shall not be relieved of its obligation to achieve Final Acceptance by the Guaranteed Completion Date for any reason.
ARTICLE 18. ACCEPTANCE OF OVERCROSSINGS AND UNDERCROSSINGS; FINAL ACCEPTANCE

18.1 Acceptance of Overcrossings and Undercrossings

18.1.1 Contractor may request that Department inspect and accept a completed overcrossing or undercrossing subject to timely completion of Punch List work related thereto prior to completion of the rest of the Project Section. After receipt of such notices that an overcrossing or undercrossing is ready for inspection and acceptance, Department and Contractor shall conduct a joint inspection to confirm that the crossing has been completed in accordance with the Contract Documents. The time for completion of each such inspection will be identified in the CPM/Payment Schedule. Department shall conduct its inspection within one week of receipt of notification from Contractor that an overcrossing or undercrossing is ready for inspection.

18.1.2 If Department finds, upon inspection, that the crossing has been completed in conformity with the Contract Documents, it shall issue its written acceptance thereof within five (5) Days of completing the inspection. If a Department inspection reveals that work has not been performed in accordance with the Contract Documents, Department shall give Contractor a detailed description of any deficiencies within five (5) Days of completing the inspection. Contractor shall correct such deficiencies so the work conforms to the Contract Documents and the corrected work shall be subject to inspection by the Department as provided herein.

18.2 Final Acceptance of a Project Section

18.2.1 Contractor shall provide a written notice of anticipated Final Acceptance of a Project Section to Department when all of the following conditions to Final Acceptance have occurred:

(a) Contractor has completed the Project Section (including all Punch List items, and final cleanup);

(b) all construction associated with the Project Section has been performed in accordance with the requirements of the Contract Documents;

(c) the Project Section may be operated without damage to the Project or any other property on or off the Site, and without injury to any Person;

(d) Contractor shall have obtained all Regulatory Approvals required to open the Project Section for normal use and operation in accordance with Section 10.2.3, and the CMMR Contractor shall have obtained all CMMR Hazardous Substance Regulatory Approvals in accordance with Section 10.2.4;

(e) Department shall have received all deliverables required under the Contract Documents, including Working Drawings, Shop Drawings, as-built drawings of the Project Section, manufacturers’ data, catalogues, and all maintenance manuals for all equipment throughout the Project Section, right of way record maps, surveys and test data;

(f) all special tools purchased by Contractor as provided in the Contract Documents shall have been delivered to Department and all replacement spare parts shall have been purchased and delivered to Department free and clear of Liens;
(g) all of Contractor’s and Subcontractors’ personnel, supplies, equipment, waste materials, rubbish and temporary facilities shall have been removed from the Site;

(h) Contractor shall have delivered to Department satisfactory evidence that there are no outstanding Contractor Claims or claims, Liens or stop notices of any Subcontractor, laborer or third party, including utility owners, with respect to the Work, other than any previously submitted unresolved Contractor Claims and any claims, Liens or stop notices of a Subcontractor, laborer or third party, being contested by Contractor (in which event Contractor shall provide a certification listing all such matters with such detail as is requested by Department and, with respect to all Subcontractor and laborer claims, Liens and stop notices and claims of third parties, shall include a representation of Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term “claim” shall include all matters or facts which may give rise to a claim;

(i) all of Contractor’s other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance of such Project Section) shall have been satisfied in full or waived; and

(j) Department’s Chief Engineer shall have delivered to Contractor a “Certification of Final Acceptance.” Such certification shall state that the Work with respect to such Project Section has been accepted for use by the Department, subject only to the exceptions noted in said certification and set forth in the as-built drawings.

18.2.2 Within 21 Days after receipt of the notice of anticipated Final Acceptance pursuant to Section 18.2.1, Department shall advise Contractor in writing of any of the following of which Department then has knowledge: (a) Defects in the Project, and/or (b) deficiencies in the Project relating to any of the items described in Section 18.2.1(a) through (i), and/or (c) deviations of any installed equipment, materials and workmanship from the requirements of the Contract Documents. Contractor shall, at its own cost and expense, correct such Defects, deficiencies and deviations. Within nine (9) Days after receipt of notice from the Contractor that any such Defect, deficiencies or deviations in the Project have been remedied or cured, Department shall notify Contractor that a Defect, deficiency or deviation continues to exist or such Defect, deficiency or deviation shall be deemed to have been remedied or cured.

“Final Acceptance” will be deemed to have occurred when either (i) Department’s Chief Engineer has issued a “Certification of Final Acceptance” to Contractor stating that the Work with respect to such Project Section has been accepted for use by the Department, subject only to the exceptions noted in said certification and set forth in the as-built drawings or (ii) each of the following has occurred: (A) Department's Chief Engineer receives a first notice from Contractor certifying that all conditions to Final Acceptance have occurred, stating that Final Acceptance may be deemed to occur if Department takes no further action and referencing this Section 18.2.2; (B) Department's Chief Engineer receives a second notice from Contractor on or after 21 Days after Department's Chief Engineer's receipt of Contractor's first notice of Final Acceptance stating that Final Acceptance will be deemed to occur after nine (9) Days from the date of the second notice if Department takes no further action and referencing this Section 18.2.2; and (C) Department has not given notice of any further Defects, deficiencies or deviations within such period.

18.2.3 Neither the occurrence of the Final Acceptance Date of such Project Section nor delivery of the Certification of Final Acceptance with respect to such Project Section shall relieve Contractor, any Subcontractor, the Surety or any Guarantor from any continuing obligations under the Contract Documents, including the warranty obligations under Article 11.
18.3 Assignment of Causes of Action

Contractor hereby offers and agrees to assign to Department all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services or materials pursuant to this Contract. This assignment shall be deemed made and shall become effective at the time final payment is tendered to Contractor, without further acknowledgment by the parties.
ARTICLE 19. CHANGES IN THE WORK

19.1 Acknowledgment and Waiver; Matters Not Eligible for Change Orders

19.1.1 Acknowledgment and Waiver

This Article 19 sets forth the requirements for obtaining all Change Orders under this Contract. Contractor hereby acknowledges and agrees that the Contract Price for the Initial Engineering Work and the Section Completion Work for each Project Section as adjusted in accordance with the Section Supplement for the related Project Section constitutes full compensation for performance of the Initial Engineering Work and/or the Section Completion Work with respect to such Project Section, subject only to those exceptions specified in this Article 19, and that Department is subject to financing constraints which have resulted in strict limitations on its ability to increase the Contract Price or extend the Guaranteed Completion Date with respect to such Work. Contractor hereby waives the right to make any Contractor Claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in this Contract for any reason whatever, except as specifically set forth in this Article 19.

19.1.2 Matters Not Eligible for Change Orders

Matters which are Contractor’s exclusive responsibility include the following:

(a) errors, omissions, inconsistencies or other defects in the Construction Documents;

(b) any design changes requested in accordance with this Contract by Department as part of the process of approving the Draft Plans and Specifications for consistency with the requirements of the Contract Documents, including any design changes relating to Project safety (except to the extent that they arise from a change in Laws, Regulations and Ordinances that constitutes a Force Majeure event);

(c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless changes in the planned sequence of performance of the Work arise from causes which otherwise give rise to a right to a Change Order);

(d) the action or inaction of Subcontractors (unless arising from causes which otherwise give rise to a right to a Change Order);

(e) correction of nonconforming Work and review and acceptance thereof by Department (including design submittals rejected in accordance with this Contract);

(f) obtaining all Regulatory Approvals (except as provided otherwise in Section 10.3) and compliance with the terms and conditions of all Regulatory Approvals;

(g) failure by Contractor to comply with this Contract;

(h) time extensions for delays not on a Critical Path;

(i) price increases for delays not on a Critical Path (unless arising from causes which otherwise give rise to a right to a Change Order);
(j) delays in issuance of any permit or approval by any entity with jurisdiction over the subject matter of such permit or approval that is required to be obtained by Contractor;

(k) costs covered by proceeds of insurance required hereunder and insurance deductibles; and

(l) delays or failure in satisfying the conditions precedent to commencement of construction Work with respect to any Project Section (other than Department-Caused Delays).

Contractor hereby assumes responsibility and accepts the allocated, sole risk for all matters described in this Section 19.1.2, and acknowledges and agrees that assumption and acceptance by Contractor of responsibility and allocation for all such risks, costs, expenses and delays, and the consequences and costs and expenses resulting therefrom, is reasonable under the circumstances of this Contract.

19.2 Right to Receive Additional Payment and Extension of Time

19.2.1 Before starting to work on any item which Contractor considers to be outside of the Work required by the Contract Documents, as a condition precedent to its right to receive additional payment therefor or an extension of the Guaranteed Completion Date in connection therewith, one of the following shall have occurred:

(a) Contractor shall have received a Directive Letter from Department stating that it is issued pursuant to Section 19.3.1;

(b) Contractor shall have received a Change Order for such work signed by Department issued pursuant to Section 19.3 or Section 19.4;

(c) a Directed Change directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by Department, regardless of whether a Directive Letter is issued, has occurred;

(d) Contractor shall have requested a Change Order for such work in accordance with this Article 19 that was disputed by Department, to the extent permitted in accordance with the dispute resolution process set forth in Article 27; or

(e) with respect to Differing Site Conditions, Contractor shall have complied with the requirements of Section 5.1.5.

19.2.2 In addition, to the extent that Contractor undertakes any work that is not part of the Work without one of the preceding, Department may require Contractor to remove or otherwise undo any such work, at Contractor's sole cost and expense.

19.3 Department Directed Changes and Procedures

Department may, at any time and from time to time, without notice to any Surety, authorize and/or require changes in the Work within the general scope of this Contract pursuant to a Directive Letter or a Change Order.
19.3.1 Directive Letter

19.3.1.1 Department may at any time issue a Directive Letter to Contractor in the event of any desired change in the Work or in the event of any dispute regarding the Work required by the Contract Documents. The Directive Letter will state that it is issued under this Section 19.3.1 and will describe the work in question. Contractor will proceed with the work as and when directed, pending the execution of a formal Change Order (or, if the letter states that the work is within the Work required by the Contract Documents, Contractor will proceed with the work as directed but shall have the right, pursuant to Section 19.4, to request that Department issue a Change Order with respect thereto). In the event that Department refuses to issue a Change Order based on Contractor’s request, Contractor shall nevertheless perform all work as and when specified by Directive Letter, and shall have the right to submit the issue to dispute resolution hereunder.

19.3.1.2 The fact that a Directive Letter was issued by Department in and of itself shall not be considered evidence that in fact a Directed Change occurred, provided that the contents of a Directive Letter may be used as evidence by either party as appropriate.

19.3.2 Notice of Proposed Change/Direction

19.3.2.1 If Department desires to issue a Change Order or a Directive Letter or to evaluate whether to initiate such a change or direction, then Department may, at its discretion, issue a Notice of Proposed Change/Direction. Within 5 Business Days after Contractor's receipt of a Notice of Proposed Change/Direction, Department and Contractor shall arrange an initial consultation (at no charge to Department) to define the proposed scope of work. Within 5 Business Days following the initial consultation, Department and Contractor shall consult concerning the estimated cost and time impacts. Contractor shall provide to Department such data regarding the estimated cost and time impacts prepared by Contractor if requested by Department.

19.3.2.2 Within a reasonable time following the initial consultation and provision of data as described in Section 19.3.2.1, Department shall notify Contractor whether Department (a) wishes to issue a Change Order or Directive Letter, or (b) no longer wishes to issue a Change Order or Directive Letter.

19.3.2.3 If Department wishes to issue a Change Order or Directive Letter, Contractor shall, within a reasonable time after receipt of the notification described in Section 19.3.2.2, prepare and submit to Department the scope, price and schedule impact, if any, of the requested change or direction, incorporating and fully reflecting all requests made by Department and all applicable information and documentation described in Section 19.4.2.2.1 through 19.4.2.2.4. The cost of developing the requested data shall be included in the Change Order as reimbursable items and will be reimbursed regardless of whether such Change Order is ever finalized or performed. Contractor represents and warrants that such data will (a) personally be examined prior to delivery by an authorized officer of Contractor, (b) clearly detail how the total price and individual components of that price were determined, and (c) include all assumptions, detailed quantity takeoffs, rates of production and progress calculations, labor rates and burdens cost estimates and quotes from Subcontractors and suppliers used by Contractor to arrive at the price.

19.3.2.4 In the event that the parties agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any increase to be made to the Contract Price or extension of the Guaranteed Completion Date to be made, Department may, in its sole discretion, order Contractor to proceed with the
performance of the Work in question notwithstanding such disagreement, by issuing a Directive Letter under Section 19.3.1.

19.3.3 NOT USED

19.4 Eligible Contractor-Initiated Change Orders and Procedures

19.4.1 Eligible Changes

19.4.1.1 Contractor may request a Change Order to extend the Guaranteed Completion Date only for the following excusable delays changing the duration of a Critical Path so as to delay Final Acceptance beyond the Guaranteed Completion Date:

(a) Department-Caused Delays;
(b) delays which are proximately attributable to Force Majeure events;
(c) delays which are directly attributable to any Differing Site Condition;
(d) delays which are directly attributable to a fire or explosion (unless due to the willful act of Contractor).

19.4.1.2 Contractor may request a Change Order to increase the Contract Price, subject to strict compliance with the requirements of this Section 19.4 and subject to certain limitations as specified in Section 19.5, only for increased costs directly attributable to:

(a) Work in response to a Notice of Proposed Change/Direction;
(b) Work resulting from Directed Changes for which Department has submitted a Directive Letter;
(c) Department-Caused Delays (excluding any delays from Directed Changes, which shall be reimbursable as part of the Change Orders for such Directed Changes);
(d) Force Majeure events (excluding insurance deductibles);
(e) Differing Site Conditions, provided that, (i) for Differing Site Conditions in Section A, the cost of performing the Section A Completion Work increases by $5,000,000 or more as a result of such Differing Site Conditions; (ii) for Differing Site Conditions in Section B, the cost of performing the Section B Completion Work increases by $7,500,000 or more as a result of such Differing Site Conditions; and (iii) for Differing Site Conditions in Section C or D, the cost of Section C or D Completion Work increases by $10,000,000 or more (all costs below such amounts to be borne by Contractor);
(f) the increased costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.2.2.5.

19.4.2 Procedures

Contractor must follow the procedure set forth in this Section 19.4.2.
19.4.2.1 RFC Notice

Contractor shall deliver to Department written notice (an “RFC Notice”) stating that an event or situation has occurred within the scope of Section 19.4.1.1 or 19.4.1.2 which Contractor believes is eligible for a Change Order. The first notice shall be labeled “RFC No. 1” and subsequent notices shall be numbered sequentially.

19.4.2.1.1 Each RFC Notice shall be delivered as promptly as possible after the occurrence of such event or situation. In the event that any RFC Notice is delivered later than ten Days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Contractor shall be deemed to have waived the right to collect any and all costs incurred during the period after ten Days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described in the RFC Notice and prior to the date of delivery of the written notice, and shall be deemed to have waived the right to seek an extension of the Guaranteed Completion Date with respect to any delay in any Critical Path which accrued during such period. Furthermore, in the event that any RFC Notice concerns any condition or material described in Section 5.1.5, Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that Department is not afforded the opportunity to inspect such material or condition before it is disturbed. Contractor's failure to provide an RFC Notice within 30 Days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Contractor from any relief, unless Contractor can show that (a) Department was not materially prejudiced by the lack of notice, or (b) Department's designated representative specified in accordance with Section 24.1 had actual knowledge, prior to the expiration of the 30-Day period, of the event or situation and that Contractor believed it was entitled to a Change Order with respect thereto.

19.4.2.1.2 The RFC Notice shall: (a) state the facts underlying the Request for Change Order, the reasons why Contractor believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each Department representative knowledgeable of the facts underlying the Request for Change Order, (c) identify any documents and the substance of any oral communication involved in the facts underlying the Request for Change Order, (d) state the basis for a claim of necessary accelerated schedule performance, if applicable, (e) state the basis for a claim that the work is not required by this Contract, if applicable, (f) identify particular elements of Contract performance for which additional compensation may be sought under this Article 19 and (g) identify any potential Critical Path impacts.

19.4.2.1.3 The written notification described in Section 5.1.5.1 may also serve as a RFC Notice provided it meets the requirements for RFC Notices.

19.4.2.1.4 Within 30 Days after receipt of a RFC Notice, Department will respond in writing to Contractor to: (a) confirm that a change has occurred; (b) deny that a change has occurred; or (c) advise Contractor that the necessary information has not been submitted to decide which of the above alternatives applies, and indicate the needed information for further review.

19.4.2.1.5 Any adjustments made to this Contract shall not include increased costs or time extensions for delay resulting from Contractor’s failure to timely provide requested additional information under this Section 19.4.2.1.
19.4.2.2 Delivery of Request for Change Order

Contractor shall deliver all Requests for Change Orders under this Section 19.4 to Department within 30 Days after delivery of the RFC Notice, or such longer period of time as may be allowed in writing by Department. Department may require design and construction costs to be covered by separate Requests for Change Order. If Contractor fails to deliver a Request for Change Order within the appropriate time period, Contractor shall be required to provide a new RFC Notice before it may submit a Request for Change Order.

19.4.2.2.1 Information Regarding Effect of Change

Each Request for Change Order shall include as attachments a detailed cost estimate relating thereto setting forth all consequences of the event, situation or proposed change giving rise to the proposed Change Order, and including (a) if Contractor claims that such event, situation or change requires a modification to the Work, the proposed modification of the Contract Price and payment allocations set forth in the CPM/Payment Schedule (if any) occasioned by such change and all facts justifying such modification in a format acceptable to Department, and (b) if Contractor claims that such event, situation or change affects a Critical Path, an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, with a narrative report, in form satisfactory to Department, which compares the proposed new schedule to the current approved schedule.

19.4.2.2.2 Justification

Each Request for Change Order initiated by Contractor hereunder shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Article 19 which permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 19.7.1.1) which establish the necessity and amount of such proposed change.

19.4.2.2.3 Contractor Representation

Each Request for Change Order shall contain a written representation by Contractor that the amount of time and/or compensation set forth therein includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change.

19.4.2.2.4 Cost Proposal

Each Request for Change Order shall include a detailed cost proposal identifying all categories of costs, supported by documentation satisfactory to Department (a) showing all impacts on the Contract from Work additions, deletions and modifications shown in the Change Order being priced and (b) setting out the proposed costs in such a way that a fair evaluation can be made. Contractor shall submit a detailed estimate of the cost of the change to Department. This estimate must include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs), contingencies and profit. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor’s stationery and shall include such quotes as back-up for Contractor’s estimate. Contractor represents and warrants that the cost proposal will (a) personally be examined prior to delivery by an authorized officer of Contractor, (b) clearly detail how the total price and individual components of that price were determined, and (c) include all assumptions,
detailed quantity takeoffs, rates of production and progress calculations, labor rates and burdens, cost estimates, and quotes from Subcontractors and suppliers used by Contractor to arrive at the price.

19.4.2.2.5 Structural or Capacity Reductions as a Result of a Discretionary Directed Change

Requests for Change Order proposing structural or capacity reductions as a result of a Discretionary Directed Change, but no other Requests for Change Order, may consider the effect on Contractor's ability to comply with its Warranties.

19.4.2.3 Incomplete Requests for Change Orders

19.4.2.3.1 If any requirements set forth in Section 19.4.2.2 cannot be met due to the nature of the occurrence, Contractor shall provide an incomplete Request for Change Order which fills in all information capable of being ascertained and which (a) includes a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to Department stating why such requirements cannot be met, (b) provides such information regarding projected impact on the Critical Path as is reasonably available, and (c) in all events includes sufficient detail to ascertain the basis for the proposed Change Order and for any ascertainable amounts with respect thereto.

19.4.2.3.2 Contractor shall furnish, when requested by Department, such further information and details as may be required to determine the facts or contentions involved. Contractor agrees that it shall give Department access to any and all of Contractor’s books, records and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that Department can investigate the basis for such proposed Change Order. Contractor shall provide Department with an update to each outstanding incomplete Request for Change Order if any change in the data (either singularly or cumulatively) causes a price or schedule change by more than 10% of such Request for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to Department, excess time expenditures to date and excess time anticipated for completion of the activities for which the time extension is claimed. Department may reject the Request for Change Order at any point in the process. Once a complete Request for Change Order is provided, Department’s failure to respond thereto within 21 Days of delivery of the request shall be deemed a rejection of such request. Although Department intends for Department to review incomplete Requests for Change Order for the purposes described in Section 19.4.2.4, Department shall have no obligation to review the back-up associated with any Request for Change Order until a complete Request for Change Order is provided.

19.4.2.4 Importance of Timely Response

Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and Requests for Change Order and updates thereto are of vital importance to Department. Department is relying on Contractor to evaluate promptly, upon the occurrence of any event or situation, whether the event or situation will affect the CPM/Payment Schedule and, if so, whether Contractor believes a time extension and/or claim on the Contingency is required hereunder. If an event or situation occurs which may affect the Contract Price or the Guaranteed Completion Date, Department will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within Department’s funding and time restraints. The following matters (among others) shall be considered in determining whether Department has been prejudiced by Contractor’s failure to provide notice in a timely fashion: the effect of the delay on alternatives available to Department (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had
notice been given within ten Days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence) and the impact of the delay on Department’s ability to obtain and review objective information contemporaneously with the event.

19.4.2.5 Review of Subcontractor Claims

Prior to submission by Contractor of any Request for Change Order which is based in whole or in part on any facts alleged in a submittal by any Subcontractor to Contractor, Contractor shall have reviewed all such Subcontractor claims and determined in good faith whether the claims are justified as to both entitlement and amount, and Contractor’s Request for Change Order shall include only those items which Contractor has determined are so justified and which otherwise meet all requirements hereunder for Contractor-initiated Change Orders. Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work shall include a summary of Contractor’s analysis of all Subcontractor claims components and shall include a certification signed by Contractor’s Project Manager stating that Contractor has reviewed and approved any audit data included in the request. Any Request for Change Order involving Subcontractor Work which is not accompanied by such an analysis and certification shall be considered incomplete.

19.5 Pricing

19.5.1 Limitations

19.5.1.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude: (a) costs caused by the breach of contract or fault or negligence, or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible; (b) costs which could reasonably be avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment) and (c) costs for remediation of any nonconforming Work. Any Change Order providing for an increase in the Contract Price shall take into account any related reduction in Contractor’s costs resulting from the Change Order.

19.5.1.2 Limitation on Delay Costs

Any increase in the Contract Price due to delays eligible for Change Orders under Section 19.4.1.2 shall be limited to overhead costs arising from such delays and direct costs resulting from such delays, provided that if the delay does not impact a Critical Path activity, the increase in the Contract Price due to such delay shall be limited to the actual costs of the affected workers and equipment that cannot be mitigated. Before Contractor may obtain any increase in the Contract Price to compensate for additional or extended overhead or direct costs resulting from delay, Contractor shall be required to demonstrate to Department’s satisfaction that (a) the change in the Work or other event or situation which is the subject of the Request for Change Order has caused or will result in an identifiable and measurable disruption of the Work, (b) the delay or cost was not due to any breach of contract or fault or negligence, or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible, and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment), (c) the delay for which compensation is sought is not concurrently caused by a matter or circumstance for which Contractor is responsible and (d) Contractor has suffered or will
suffer actual overhead and direct costs due to such delay, each of which overhead and direct costs shall be documented in a manner satisfactory to Department.

19.5.2 Pricing Methodologies

Department and Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate a reasonable cost for each Change Order. If the parties agree that Contractor is entitled to additional compensation or additional time for the work which is the subject of a Change Order, but cannot agree as to the amount, then unless, given the nature of such change, Department and Contractor agree that a time and materials approach is not practicable, Contractor shall be entitled to receive payment as provided in Sections 19.5.2.1, 19.5.2.2 and 19.5.2.3, subject to Department's right to not issue a Change Order or to refuse to pay incurred costs which Department deems unreasonable. If the parties agree that a time and materials approach is not practicable, Department shall reduce the amount of the price increase or time extension as Department deems appropriate and Department shall execute and deliver a Change Order reflecting such reductions to Contractor, within a reasonable period after receipt of a request by Contractor to do so.

19.5.2.1 Subject to Sections 19.5.2.2 and 19.5.2.3, compensation for time and material Change Orders shall be limited to such of the following direct costs, whether incurred by Contractor or a first-tier construction Subcontractor, which are actually and reasonably incurred as a direct and sole result of the event or matter giving rise to the change and no others:

(a) the cost of labor, including social security, old age survivors and disability insurance, unemployment insurance, fringe benefits required by agreement or custom and workers' compensation insurance;

(b) the cost of materials, supplies and equipment, including the cost of transportation, taxes and duties, whether incorporated in the Project or consumed;

(c) rental or depreciation costs of plant, buildings, machinery, equipment and hand tools, whether Contractor owned or rented from others;

(d) permit fees and sales and use or similar taxes related to such changes;

and

(e) costs directly attributable to the charges of consultants or lower tier Subcontractors directly attributable to performance of the change.

19.5.2.2 Direct costs allowable under Section 19.5.2.1 shall either be marked-up by 15% for overhead and profit in the event of non-subcontracted Work, or shall be marked up by 22.5% for cumulative overhead and profit of Contractor and Subcontractors in the event of subcontracted Work.

19.5.2.3 The following items are included in the Change Order mark-up for overhead and profit:

(a) Salary and expenses of executive officers, supervising officers or supervising employees and technical or engineering employees;

(b) Contractor's Project Manager;

(c) Clerical or stenographic employees;
(d) Drafting room accessories such as paper, tracing cloth, blue printing, etc.;

(e) Any and all field and home office overhead and operating expenses whatsoever;

(f) Subsistence and travel expenses for all personnel;

(g) All bond and insurance premiums;

(h) Attorneys' fees and costs;

(i) All other indirect costs;

(j) Costs of furnishing the reports described in Section 19.7; and

(k) Profit.

19.6 Limitation on Time Extensions

Any extension of the Guaranteed Completion Date allowed hereunder shall exclude any delay to the extent that it (a) was due to the fault or negligence, or act or failure to act of Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be contractually or legally responsible, or (b) could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work. Contractor shall be required to demonstrate to Department’s satisfaction that the change in the Work or other event or situation which is the subject of the Request for Change Order seeking a change in the Guaranteed Completion Date has caused or will result in an identifiable and measurable disruption of the Work so as to delay completion thereof and change the duration of a Critical Path which was not due to any such fault or negligence and could not reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work.

19.7 Change Order Records

Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price and the costs of other operations. Contractor shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs of all Work which is the subject of a Change Order or a requested Change Order, but specifically excluding negotiated and issued Change Orders, and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path activity with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the CPM/Payment Schedule is in dispute. Such data shall be provided to Department and any authorized representative of such Persons reviewing any Contractor Claim or dispute regarding compensation for such Work as provided in Section 12.1.

19.7.1 Daily Work Reports and Data Collection

19.7.1.1 Contractor shall collect and preserve concurrent time and materials data and records in written form for (a) all time and materials Work and (b) all Work performed which Contractor believes constitutes extra work, pending issuance of a Change Order or resolution of any dispute in accordance with Article 27. At reasonable times as requested by Department, Contractor shall provide
Department with a copy of each such item; provided, however, that the provision of such information shall not constitute a RFC Notice under Section 19.4.2.1.

19.7.1.2 From the records and data described in Section 19.7.1.1, Contractor shall furnish Department completed daily work reports for each Day's Work to which Section 19.7.1.1 applies. The daily time and material Work reports shall be detailed as follows:

(a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom direct reimbursement is requested.

(b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Quantities of materials, prices, and extensions.

(d) Transportation of materials.

(e) For construction labor, the cost of property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, bonds, and social security tax.

19.7.2 Supplier’s Invoices

Material charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily time and material Work reports, or if not available, they shall be submitted with subsequent daily time and material Work reports.

19.7.3 Execution of Reports

All time and materials reports shall be signed by Contractor’s Project Manager.

19.8 Disputes

The failure of Department and Contractor to agree to any Change Order under this Article 19 (including agreement as to the amount of compensation allowed under Section 19.5.2 and any disputed amount of the increase in the Contract Price or extension of the Guaranteed Completion Date in connection with a Change Order) shall be a dispute to be resolved in accordance with Article 27. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims of any nature arising from or relating to the Work covered by the Change Order.
ARTICLE 20. SUSPENSION OF ALL OR PART OF WORK

20.1 Suspension for Convenience

Department shall have the right to order Contractor in writing to suspend, delay, or interrupt all or any part of the Work for a period of time not to exceed 24 hours twice in any 12-month period, as Department may determine to be appropriate for the convenience of Department, which shall not be considered a Department-Caused Delay. Any additional suspensions for convenience, including any suspension for convenience in excess of 24 hours, which results in a delay to the Critical Path shall require Department’s signature and will be considered a Department-Caused Delay.

20.2 Suspension for Other Reasons

20.2.1 Department has the authority to suspend the Work wholly or in part, for such period as Department deems necessary because of the failure on the part of Contractor to carry out orders given, or to perform any requirements of the Contract Documents. Contractor shall promptly comply with the written order of Department to suspend the Work wholly or in part. The suspended Work shall be resumed when appropriate corrective action has been taken.

20.2.2 Contractor shall not be entitled to any increase in the Contract Price or extension of the Guaranteed Completion Date in connection with any suspension under this Section 20.2, including for the work described in Section 20.3.

20.3 Project Safety

In the event of a suspension of Work under this Article 20, Contractor shall undertake all work necessary to ensure Project safety, including providing a safe, smooth, and unobstructed passageway through the construction area for use by public traffic during the period of such suspension.
ARTICLE 21. INDEMNITY; HAZARDOUS SUBSTANCE LIABILITY; INDEMNIFICATION PROCEDURES

21.1 Indemnifications by Contractor

(a) Except as otherwise expressly provided in subsection (b) below, Contractor shall indemnify, protect, defend, hold harmless and release each State Indemnitee from and against any and all third party Claims arising out of the following:

(i) any error or negligent act or omission of any Contractor Party, provided that the indemnity under this subsection (a)(i) concerning Claims not related to Project Right of Way acquisition, Utility Relocations, procurement and documentation shall be limited to such Claims arising out of death, bodily injury or property damage suffered by third parties;

(ii) any violation by any Contractor Party of Laws, Regulations and Ordinances in connection with or relating to the Project or the Work;

(iii) any mechanic's, materialman's or design professional's lien on Department's right, title and interest in and to any Project Right of Way or other property arising out of the actual or alleged furnishing of labor, materials or services to or for the Project or any portion thereof by or on behalf of or at the request of any Contractor Party and due to Contractor's failure or alleged failure to pay to others any amount due or alleged to be due, provided that there has been no default in payment to Contractor under this Contract;

(iv) any failure of any Contractor Party to pay any sales, use or other taxes due or alleged to be due in connection with the Work or the purchase, supply or use of any materials, services or equipment;

(v) any Hazardous Substances originally introduced to or brought onto any Project Right of Way or other Department property by any Contractor Party;

(vi) the presence, spreading, migration, release, remediation, storing, transportation or disposal of Pre-Existing Hazardous Substances not discovered during site acquisition work due to failure of any Contractor Party to conduct investigations according to the procedures and provisions required by this Contract;

(vii) failure of any Contractor Party to handle, store, transport, monitor, remediate or dispose of, in compliance with Laws, Regulations and Ordinances in effect at the time of the activity in question, Pre-Existing Hazardous Substances which are or become known or apparent to any Contractor Party through site investigation or during the course of construction except to the extent the management of such Pre-Existing Hazardous Substances is the responsibility of a CMMR Contractor under Section 6.5.6;

(viii) exacerbation, due to the negligence, recklessness or willful misconduct or failure to provide proper engineering controls of any Contractor Party, of the release, spreading, migration or toxicity of Hazardous Substances which are or become known or apparent to or reasonably suspected by any Contractor Party through site investigation or during the course of construction;
(ix) infringement by any Contractor Party (excluding third party equipment and software vendors) of any actually or allegedly patented, copyrighted, trademarked, service-marked or other proprietary materials, equipment, devices or processes; and

(x) fraud or intentional misrepresentation by any Contractor Party.

(b) Contractor's indemnities exclude the portion of liability on a Claim that is attributable (i) to the culpability of a State Indemnitee or (ii) to a deficiency in a required Department design or construction standard which either (A) is unknown to Contractor or (B) although known to Contractor, is communicated in writing to Department and which requirement is not waived by Department. If the culpability of a State Indemnitee or such deficiency in a Department design or construction standard has contributed to a loss, Contractor shall not be obligated to indemnify State Indemnitees for the proportionate share of such Claim caused thereby.

(c) For purposes of this Section 21.1, a "third party" means any person or entity other than a State Indemnitee, except that a third party includes (i) any State employee, agent and contractor or his or her heir or representative who asserts a Claim arising out of death, bodily injury or property damage against a State Indemnitee and which is not covered by State's worker's compensation program, and (ii) any State department or agency other than Department which in the exercise of its authority imposes upon Department Hazardous Substance remediation requirements or costs which are within the scope of an indemnity set forth in this Section 21.1.

21.2 No Indemnity Regarding Pre-Existing Hazardous Substances

Except to the extent provided in Sections 21.1(a)(vi), (vii), and (viii), the parties agree that neither shall have any obligation to indemnify the other or any third-party beneficiary or assignee with respect to any Claim relating to Pre-Existing Hazardous Substances.

21.3 Defense and Indemnification Procedures

(a) If Department receives notice of or otherwise has actual knowledge of a Claim which it believes is within the scope of Contractor's indemnification under Section 21.1, it shall by writing as soon as practicable (i) inform Contractor of such Claim; (ii) send to Contractor a copy of all written materials Department has received asserting such Claim and (iii) notify Contractor that either (A) the defense of such Claim is being tendered to Contractor or (B) Department has elected to conduct its own defense for a reason set forth in subsection (e) below.

(b) If the insurer under any applicable insurance policy accepts tender of defense, Contractor and Department shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then subsections (c), (d), (e) and (f) below shall apply.

(c) If the defense is tendered to Contractor, it shall within 45 Days of said tender deliver to Department a written notice stating that Contractor (i) accepts the tender of defense and confirms that the Claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter, (ii) accepts the tender of defense but with a "reservation of rights" in whole or in part or (iii) rejects the tender of defense if it reasonably determines it is not required to indemnify against the Claim under Section 21.1. If such notice is not delivered within such 45 Days, the tender of defense shall be deemed rejected.
(d) If Contractor gives notice under subsection (c)(i) above, Contractor shall have the right to select legal counsel for the State Indemnitees, subject to reasonable approval of the State Attorney General, and Contractor shall otherwise control the defense of such Claim, including settlement, and bear the fees and costs of defending and settling such Claim. During such defense: (A) Contractor shall at Contractor's expense, fully and regularly inform Department of the progress of the defense and of any settlement discussions; and (B) Department shall, at Contractor's expense for all of Department's third party expenses, fully cooperate in said defense, provide to Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to Department and maintain the confidentiality of all communications between it and Contractor concerning such defense.

(e) Department shall be entitled to select its own legal counsel and otherwise control the defense of such Claim if: (i) the defense is tendered to Contractor and it refuses the tender of defense, or fails to accept such tender within 45 Days, or reserves any right to deny or disclaim such full indemnification thereafter; or (ii) Department, at the time it gives notice of the Claim or at any time thereafter, reasonably determines that (A) a conflict exists between it and the Contractor which prevents or potentially prevents Contractor from presenting a full and effective defense or (B) Contractor is otherwise not providing an effective defense in connection with the Claim and Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense. Department may assume its own defense pursuant to subsection (e)(ii) above by delivering to Contractor written notice of such election and the reasons therefor. A refusal of, or failure to accept, a tender of defense may be treated by Department as a Claim against Contractor subject to resolution pursuant to Article 27.

(f) If Department is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending and Claim for which it is entitled to indemnification hereunder shall be reimbursed by Contractor on a current basis. In the event Department is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the Claim with the Contractor's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of the Contractor's indemnity.
ARTICLE 22. INSURANCE AND BONDING

22.1 General and Auto Liability Insurance

22.1.1 Contractor shall obtain and keep in force until Final Acceptance of the last Project Section authorized to be constructed by Contractor under the Comprehensive Agreement, as so long as any Warranty Work is being conducted by the Contractor hereunder a policy or policies of broad form commercial general liability insurance including premises/operations, products/completed operations for a period of two years from completion of the Work hereunder, to include coverage for joint ventures, personal and advertising injury liability coverage, pollution liability coverage, contractual liability coverage, explosion, collapse and underground property damage coverage for all claims related to the Project or Project Right of Way and related construction and staging areas.

22.1.2 Such insurance policy(s) shall provide coverage of no less than $25 million per occurrence with aggregate limits per policy period providing at least $25 million aggregate, which upon issuance for the Notice to Proceed for Section Completion Work shall be available specifically and exclusively for the Project. Contractor may obtain the required coverage through any combination of primary and excess insurance policies. Contractor shall demonstrate financial ability to meet any deductible.

22.1.3 Contractor shall obtain and keep in force until Final Acceptance of the last Project Section authorized to be constructed by Contractor under the Comprehensive Agreement, and so long as any Warranty Work is being conducted by the Contractor hereunder, and which upon issuance of the Notice to Proceed for Section Completion Work shall be available specifically and exclusively for the Project and Project Right of Way, a policy or policies of business auto liability insurance for all motor vehicles owned by, used by or in the care, custody and control of the Contractor. Such insurance policy or policies shall provide coverage of no less than $5 million per occurrence and in the aggregate per policy period. Contractor shall demonstrate sufficient financial ability to meet any deductible.

22.2 Professional Liability Insurance

Prior to the Notice to Proceed for Initial Engineering Work, Contractor shall procure an insurance policy for professional liability covering all work performed by any licensed professional. Such insurance shall provide coverage of no less than $5 million per occurrence and $15 million in the aggregate to be available specifically and exclusively to the Project. The insurance shall include a deductible not greater than $100,000 for each claim. Contractor shall demonstrate sufficient financial ability to meet any deductible. Any of these policies of insurance that expires or is cancelled within three years of the completion date of the Project shall be extended through the use of “Tail” coverage for a period of not less than five (5) years.

22.3 Property Insurance

Prior to the commencement of construction in any Project Section and thereafter throughout the course of such construction or any substantial repair, alteration, reconstruction, restoration or replacement in such Construction Segment as determined by the Department, Contractor shall obtain and keep in force an All-Risk Builder’s Risk Insurance policy covering, but not limited to, damage resulting from earth movement, collapse, earthquake, faulty workmanship, and inherent vice. Coverage should include all equipment, tools, materials and supplies to be installed. Contractor shall demonstrate sufficient financial ability to meet any deductible.
22.4 Workers’ Compensation Insurance

22.4.1 At all times required by law Contractor shall procure and maintain in full force and effect insurance coverage for all employees suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Satisfaction of these requirements shall include:

(a) full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such program is mandatory in any jurisdiction;

(b) purchase of workers’ compensation and occupational disease insurance providing benefits to employees in full compliance with all applicable Laws, Ordinance and Regulations, but only to the extent such coverage is not provided under a mandatory government program as in subsection (a) above; and/or

(c) maintenance and demonstration prior to commencement of any work of a legally permitted and Commonwealth of Virginia approved program of self-insurance for workers’ compensation and occupational disease.

22.4.2 Except to the extent prohibited by law, the program for Contractor’s compliance with workers’ compensation and occupational disease Laws, Regulations and Ordinances set forth in Section 22.4.1 shall provide for a full waiver of rights of subrogation against any State Indemnitee.

22.4.3 If Contractor fails to effect and maintain a program of compliance with applicable worker’s compensation and occupational disease Laws, Regulations and Ordinances and a State Indemnitee incurs fines or is required by law to provide benefits to such employees, or to obtain coverage for such employees, Contractor shall indemnify the State Indemnitee for such fines, payment of benefits to Contractor or Subcontractor employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount Contractor owes to the State Indemnitee pursuant to the indemnity may be deducted from any payments Department owes Contractor pursuant to this Contract.

22.4.4 In addition to complying with the provisions for workers’ compensation above, Contractor shall at all times required by law maintain coverage for employers liability with a policy limit of $5 million per accident and in the aggregate per policy period.

22.5 Other Insurance Covenants

22.5.1 Each insurance policy provided for this Contract shall:

(i) Be in form and substance acceptable to the Virginia State Corporation Commission, Bureau of Insurance and the Department;

(ii) Be issued by insurers authorized to do business in Virginia and having an A. M. Best rating of not less than A- or its equivalent Standard & Poor’s, Moody’s Investors Service or Duff & Phelps Credit Rating or as approved by the Commonwealth.

(iii) If primary, shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and errors and omissions policies). All policies written on a "claims made" basis shall be renewed or include a tail period of at least three years after expiration of the policy period;
(iv) provide that no deductibles or self-insured retentions shall be applied against the State or Department;

(v) provide that no policy can be canceled, suspended, lapsed or materially modified without at least 30 Days prior written notice by registered or certified mail to the Department.

(vi) with respect to the insurance policies described in Sections 22.1 and 22.3 (both primary and excess):

(A) provide that the coverage thereof is primary and non-contributory coverage with respect to all named or additional insureds to the extent of the liability assumed by the Contractor under the Contract; and

(B) provide that the Commonwealth of Virginia, the Department and all officials and employees are named as additional insureds to the extent of the liability assumed by the Contractor under the Contract on each commercial general liability and auto liability insurance policy covering or related in any way to the Project or Project Right of Way.

(vii) contain no provisions or exclusions inconsistent with this Contract.

22.5.2 Contractor shall deliver, or cause to be delivered, to the Department prior to the commencement of construction a binder or certificate of insurance from the agent, broker or insurer demonstrating the identity of all insurers, named and additional insureds, type of coverage, endorsements, policy limits and deductibles, subrogation waiver and other essential terms and statement of non-cancellation consistent with § 22.5.1(v) of the Code of Virginia. Upon request of the Commonwealth of Virginia, Contractor shall provide copies of applicable policies.

(A) Each binder or certificate with respect to project-specific insurance shall have attached to it a copy of the declaration sheet of each policy of insurance with the name of the contract and contract number specifically identified and referenced on it.

(B) No later than 30 Days prior to the expiration of any insurance policy, a binder or certificate must be submitted demonstrating renewal or continuation of the policy.

(C) All binders or certificates of insurance shall be in a form acceptable to the Department.

22.5.3 Contractor shall procure insurance meeting or exceeding all the terms and conditions required by Article 22 herein. Should an adverse insurance market prohibit the purchase of any policy of insurance meeting or exceeding the terms and conditions required by Article 22 herein, the Contractor shall have the agent, broker or insurer provide evidence to the Department of such lack of availability by submitting written evidence of all markets approached and their response. If such insurance is not available and cannot be obtained through the use of higher deductibles and retention, alternative approaches may be permitted with the approval of the Department.

22.5.4 Contractor shall observe and comply with the lawful requirements of all insurance policies. Contractor also shall perform and satisfy the commercially reasonable requirements of insurance
companies writing such types of insurance policies so that at all times companies of good standing and meeting the requirements of Section 22.5.1(ii) shall be willing to write or to continue such coverage.

22.5.5 Any insurance coverage required in this Article 22 may be effected by a policy or policies of blanket insurance, provided that (i) the Project, Project Right of Way and related construction and staging areas are specifically identified therein, by endorsement or otherwise, as included in the coverage provided; (ii) the amount of the total insurance allocated to the Project, Project Right of Way and related construction and staging areas shall be such as to furnish protection equivalent to that which would be afforded by separate insurance policies in the amounts herein required; and (iii) in all other respects any such blanket policy or policies shall comply with all other provisions of this Article 22.

22.5.6 Department makes no representation that the limits of liability specified for the insurance policies to be carried pursuant to this Article 22 are adequate to protect Contractor against its undertakings under this Contract or any other Project Agreement or preclude Department from taking any actions as are available to it under this Contract or otherwise at law. Department shall not be limited to the amount of the insurance premium not paid in the proof of any damages it may claim against Contractor or any other person arising out of or by reason of failure of Contractor to provide and keep in force the insurance policies required by this Article 22; but Department shall instead be entitled to recover the full amount of damages available.

22.5.7 If the insurance carriers for any insurance policy described in this Article 22 deny coverage to Contractor or Department with respect to any Contractor Claims reported to such carriers, Contractor and Department shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage.

22.6 Performance and Payment Bonds

22.6.1 A Payment Bond with respect to the Section Completion Work of any Project Section shall be delivered in accordance with the Supplement for such Project Section in an amount equal to 100% of the Section Completion Work Price. The Payment Bond shall be executed and delivered prior to issuance of any Notice to Proceed for Section Completion Work and shall remain in full force and effect until the later to occur of one year after the Final Acceptance Date for the Project Section or resolution of all claims filed thereunder, and shall be in the form attached hereto as Appendix 4. Contractor shall provide to Department a Performance Bond in the amount of 100% of the Section Completion Work Price, in the form attached hereto as Appendix 5. Each Performance Bond with respect to a Project Section shall be executed and delivered prior to the issuance of any Notice to Proceed for Section Completion Work and shall remain in full force and effect until the final expiration of all Warranties with respect to such Project Section; provided however, the amount of the Performance Bond may be reduced to 20% of the Section Completion Work Price upon Final Acceptance or replaced by a warranty bond acceptable to the Department.

22.6.2 The Payment and Performance Bonds shall be executed by the Contractor and a surety company authorized to do business in the State in accordance with the laws of the State and the rules and regulations of the State Corporation Commission. In order to be considered properly executed, the bonds shall include authorized signatures and titles.

22.6.3 In lieu of Payment or Performance Bonds, Contractor may furnish a certified check or cash escrow, under mutual escrow instruction approved by the Department in writing in the face amount required for each of the bonds, which will be held for the full period as applicable for each bond.
22.7 Completion Guaranty

Concurrently with execution of this Contract, Contractor has provided to Department the Completion Guaranty with respect to the Initial Engineering Work in the form attached as Exhibit E to the Comprehensive Agreement, executed by Halliburton Company (the "Guarantor"). Prior to issuance of the Notice to Proceed for the Section Completion Work for any Project Section, Contractor shall provide the Department with an amendment to the Completion Guaranty extending it to such Work.
ARTICLE 23. CONTRACTING PRACTICES

23.1 Obligation to Refrain from Discrimination

Contractor shall comply with Section 9.2 of the Comprehensive Agreement.

23.2 Disadvantaged Business Enterprises

23.2.1 Department has adopted a Disadvantaged Business Enterprises ("DBE") program (which consists of both minority-owned firms and women-owned firms). Contractor acknowledges that the Department has adopted an overall statewide DBE participation goal of 10.5%. Even though the Project has no specific DBE goal stipulated or required, the Contractor shall diligently seek to comply with the aforementioned overall DBE participation goal, use good faith efforts to allow DBE’s the opportunity to participate as contractors and subcontractors in the design and construction of the Project and shall in all events comply with the commitments made in the Disadvantaged Business Enterprise Subcontracting Plan set forth in Appendix 7 hereto.

23.2.2 Contractor shall incorporate in all Subcontracts the requirement to diligently seek to comply with the commitments made in the Disadvantaged Business Enterprise Subcontracting Plan set forth in Appendix 7 hereto.

23.3 Disadvantaged Business Enterprise Employment and Contracting Procedures

Contractor acknowledges and agrees that it is the policy of Department to promote and ensure economic advancement of minorities and women through employment. Contractor shall employ or select employees possessing the necessary skill, expertise, cost level and efficiency for the performance of the Work.

23.4 Subcontracts

23.4.1 Each instrument evidencing any agreement of Contractor with any Subcontractor shall provide that, pursuant to terms in form and substance satisfactory to Department, (a) the rights (but not the obligations) of Contractor under such instrument are assigned to Department and their respective successors and assigns (contingent only upon written acceptance of the assignment from the assignee(s) or its (their) successor(s) or assign(s) following default by Contractor or, subject to Section 26.2.3, termination or expiration of this Contract), and (b) all warranties, guarantees and indemnifications (express and implied) of such Subcontractor shall inure to the benefit of Department and its successors and assigns.

23.4.2 Notwithstanding any Subcontract or agreement with any Subcontractor, Contractor shall be fully responsible for all of the Work (except as may be expressly provided to the contrary herein). Department shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind them.

23.4.3 Contractor shall, each month and from time to time upon request, provide Department with a list of all Subcontractors, shall allow Department access to all Subcontracts and shall deliver to Department, within ten (10) Days after receipt of a request from Department, copies of all provisions in Subcontracts as may be requested that evidence compliance with the terms of this Contract. However, Department’s access to Subcontracts under this Section 23.4.3 shall be restricted to the purpose of insuring the Contractor’s compliance with the terms of this Contract and Contractor shall, in its sole
discretion, redact or otherwise omit from Subcontracts made available for the Department’s inspection any and all commercial terms. This Section 23.4.3 is not intended to restrict the Department’s rights under Article 8.
ARTICLE 24. REPRESENTATIVES

24.1 Designation of Representatives; Cooperation with Representatives

24.1.1 Department and Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Appendix 8 hereto provides the initial designations. Such individuals shall constitute Authorized Department Representatives and Authorized Contractor Representatives, respectively. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 16.3 of the Comprehensive Agreement. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to enter into binding agreements.

24.1.2 Contractor shall cooperate with Department and all representatives of Department designated as described above.
ARTICLE 25. DEFAULT

25.1 Default of Contractor

25.1.1 The term "Event of Default" shall mean the occurrence of any one or more of the following events or conditions, following notice and opportunity to cure (if applicable) as specified in Section 25.1.2 and an election by Department to declare that an Event of Default has occurred in writing and given to Contractor and Surety:

(a) Contractor fails either (i) to promptly begin the Work under the Contract Documents or (ii) to prosecute the Work in accordance with the CPM/Payment Schedule; or

(b) Contractor fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work; or

(c) Contractor discontinues the prosecution of the Work (exclusive of Work stoppage (i) due to termination by Department, (ii) due to and during the continuance of a Force Majeure event, the performance of any Reimbursable Site Work or a suspension by Department or (iii) to the extent permitted under Section 25.4); or

(d) Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from Department to do so or (if applicable) after cessation of the event preventing performance; or

(e) Contractor or the Guarantor under the Completion Guaranty shall have become insolvent, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors; or

(f) Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced (i) by Contractor or the Guarantor (but not necessarily in the same proceeding or concurrently) or (ii) against Contractor or the Guarantor (but not necessarily in the same proceeding or concurrently) and such case or cases shall not be contested by the Guarantor) in good faith or shall remain undischmissed and unstayed for a period of 90 Days; or

(g) Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument or other document delivered by Contractor pursuant to the Contract Documents, or any representation of warranty made by any Guarantor under the Completion Guaranty, shall have been materially false or misleading when made; or

(h) Contractor breaches any material agreement contained in the Contract Documents; or

(i) Contractor shall be in default under the Comprehensive Agreement; or

(j) Contractor shall have assigned or transferred the Contract Documents or any right or interest therein without Department’s prior written consent, and any transfer of the right or practical ability to control the policies or decisions of Contractor, whether due to transfer of partnership or membership interests, shares, beneficial interests or otherwise shall constitute an assignment or transfer prohibited under this subsection (j) without Department's prior written consent; or
(k) Contractor shall have failed, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or shall have materially failed to comply with any Laws, Regulations and Ordinances or failed reasonably to comply with the instructions of Department consistent with the Contract Documents.

25.1.2 Contractor and Surety shall be entitled to 10 Days notice and opportunity to cure any breach described in (a) through (d) and (h) through (k) of Section 25.1.1 above (excluding any such breach which by its nature cannot be cured); provided that (a) if such breach is capable of cure but by its nature cannot be cured within 10 Days, such additional period of time shall be allowed as may be reasonably necessary to cure the breach, provided Contractor or Surety or any Guarantor under the Completion Guaranty commences such cure within such 10-Day period and thereafter diligently prosecutes such cure to completion; (b) in the case of an emergency Department shall have the right to shorten the 10-Day cure period by so specifying in the notice of breach; (c) no cure period shall in any event extend beyond the date on which the maximum amount of Liquidated Damages under Section 25.6.1.1 has accrued, and (d) no cure period shall extend the Guaranteed Completion Date or the deadline for Final Acceptance, nor shall any cure period excuse, delay or extend Contractor's obligations to pay Liquidated Damages hereunder.

25.2 Remedies for Contractor Event of Default

25.2.1 Upon the occurrence of an Event of Default, Department's obligation to make payments to Contractor hereunder shall be suspended unless and until the Event of Default is cured.

25.2.2 Upon the occurrence of an Event of Default, Department may notify Contractor to discontinue all or part of the Work and may terminate this Contract. In such event, Department may appropriate any or all materials and equipment on the Site as may be suitable and acceptable and may (a) direct the Surety and/or any Guarantor to complete such portion of the Work or complete this Contract, (b) enter into an agreement for the completion of such portion of the Work or the completion of this Contract according to the terms and provisions thereof with another contractor (should the Surety or any Guarantor fail to comply with its obligations), the Surety or any Guarantor, or (c) use such other methods as it deems necessary for the completion of such portion of the Work or the completion of this Contract, including completion of the Work by Department. In the event that this Contract is terminated, Sections 26.2.3, 26.2.4, 26.2.5, 26.2.6, 26.2.7, 26.2.8 and 26.2.9 shall apply and Contractor shall immediately deliver to Department all completed and partially completed Work Product (including that not yet paid for due to offset claims of Department). In the event that this Contract is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience.

25.2.3 Contractor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a breach or default by Contractor or by Department’s declaration of an Event of Default, or by actions taken by Department under this Section 25.2.

25.2.4 All costs and charges incurred by Department, together with the cost of completing the Work, will be deducted from any moneys due or that may become due Contractor, the Surety or any Guarantor, subject to Department's good faith efforts to mitigate damages. Subject to Sections 25.3.1 and 25.3.2, if such expense exceeds the sum which would be available from such moneys, then Contractor, the Surety and each Guarantor shall be jointly and severally liable and shall pay to Department the amount of such excess.

25.2.5 Each right and remedy of Department hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein, and the exercise or beginning of the exercise by
25.3 Certain Limitations on Department Remedies

25.3.1 Subject to the limitations in Section 25.7, Contractor’s liability to Department for damages resulting from breach of this Contract shall be limited to Liquidated Damages provided in Section 25.6 and all those costs reasonably incurred by Department or any party acting on Department’s behalf in completing or correcting the Work and repairing any damage to the Project or other property of any State Indemnitee caused thereby. This limitation of liability shall not apply to liabilities incurred by Contractor arising out of its obligation to indemnify, defend and hold harmless each State Indemnitee from third party Claims under Section 21.1 or to the extent covered by insurance required hereunder.

25.3.2 If the Event of Default consists solely of Contractor’s actual or projected failure to achieve Final Acceptance by the Guaranteed Completion Date, Department shall have no right to terminate this Contract under Section 25.2.2 until such time, if any, as the accumulated and/or projected Liquidated Damages set forth in the Section Supplement exceed or would exceed the maximum amount of Liquidated Damages set forth in such Section Supplement, whereupon Department shall be free to terminate this Contract under Section 25.2.2. and exercise other available remedies under Section 25.2.

25.3.3 Where this Contract provides an expressly stated remedy, such expressly stated remedy shall be exclusive of any inconsistent, additive or alternative extra-contractual remedies which might otherwise have been available at law or equity, except for (a) any common law or statutory right to indemnity or contribution regarding liability of potentially responsible parties for Pre-Existing Hazardous Substances, where the liability is not otherwise the subject of an indemnity pursuant to Section 21.2, (b) any claim or cause of action for fraud or intentional misrepresentation and (c) any subject matter on which no express contractual remedy is provided. The parties may resort to any remedy available at law or equity with respect to the foregoing exceptions.

25.4 Failure to Deliver Payment; Unavailability of Funds

In the event that Contractor fails to receive a payment in the amount approved under Section 14.2.2 by the date specified for payment in Section 14.2.2, Contractor may request written assurances from Department that payment will be made. Unless Contractor receives reasonably acceptable assurances from Department within five (5) Business Days after delivery of such request to Department, or a written statement from Department contesting Contractor’s right to such payment or asserting offset rights under this Contract, Contractor shall have the right to suspend the Work for such period, provided that Contractor shall have provided a separate written notice to Department stating that Contractor is not satisfied with the assurances and describing the reasons for such dissatisfaction, which notice shall have been delivered at least three (3) Business Days before suspending the Work. Notwithstanding the foregoing, Contractor shall have no right to request or receive assurance of payment, or to stop Work, where Department has suspended payment in accordance with Section 25.2.1.

25.5 Limitation on Contractor Remedies

Except as otherwise provided in Section 25.4, and in all events subject to Section 13.6 of the Comprehensive Agreement, in the event of any alleged breach of this Contract by Department, Contractor shall provide Department written notice describing the alleged breach and 30 Days opportunity to cure the same, as a condition precedent to exercising any remedies to which Contractor is entitled at law or in equity with respect thereto.
25.6 **Liquidated Damages** *See Section Supplement.*

25.7 **Consequential Damages**

Except as expressly provided in this Contract 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:

(a) prejudice Department's right to recover Liquidated Damages from Contractor as provided herein;

(b) limit Contractor's liability for any type of damage arising out of Contractor's obligation to indemnify, defend and hold each State Indemnitee harmless from third party Claims under Section 21.1 and elsewhere in this Contract;

(c) limit Contractor's liability for any type of damage to the extent covered by insurance required hereunder;

(d) limit Contractor's liability for any type of damage to the extent required to be covered by third party warranties required to be obtained by Contractor hereunder if Contractor fails to obtain such warranties; and

(e) limit Contractor’s right to a Change Order for delays or other events as provided in Section 19.4.1.2 that otherwise meet the requirements of Article 19, including, without limitation, Section 19.5.1 and 19.5.2.
ARTICLE 26. TERMINATION FOR CONVENIENCE

26.1 Notice of Termination

Department may terminate this Contract and the performance of the Work by Contractor at any time prior to the date of Final Acceptance if Department determines, in its sole discretion, that a termination is in its best interest. Department shall notify Contractor of the decision to terminate by delivering to Contractor a written Notice of Termination specifying the extent of termination and its effective date. Termination of this Contract shall not relieve the Surety of its obligation for any just claims arising out of or relating to the Work.

26.2 Contractor’s Responsibilities After Receipt of Notice of Termination

After receipt of a Notice of Termination, and except as directed by Department, Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Article 26:

26.2.1 Stop Work as specified in the notice;

26.2.2 Enter into no further Subcontracts and place no further orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages;

26.2.3 Terminate all Subcontracts to the extent they relate to the Work terminated except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;

26.2.4 Assign to Department or its designee in the manner, at the times, and to the extent directed by Department, all of the right, title, and interest of Contractor under the Subcontracts so terminated, in which case Department will have the right, in its sole discretion, to accept performance, settle or pay any or all claims under or arising out of the termination of such Subcontracts;

26.2.5 Settle outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of Department, to the extent it may require, which approval or ratification shall be final;

26.2.6 Transfer and deliver to Department or its designee, as directed by Department, (a) possession and control of the Project, and (b) all right, title and interest of Contractor in and to (i) the Work in process, completed Work, supplies and other materials produced or acquired for the Work terminated, and (ii) the Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples, information and other Work Product that would have been required to be furnished to Department if the Work had been completed;

26.2.7 Complete performance in accordance with the Contract Documents of all Work not terminated;

26.2.8 Take all action that may be necessary, or that Department may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Contractor and in which Department has or may acquire an interest.; and
26.2.9 As authorized by Department, use its best efforts to sell at reasonable prices any property of the types referred to in Section 26.2.6; provided, however, that Contractor (a) shall not take any such action with respect to any items for which title has previously transferred to Department, (b) is not required to extend credit to any purchaser, and (c) may acquire the property itself, under the conditions prescribed and at prices approved by Department. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Department under the Contract Documents or paid in any other manner directed by Department.

26.3 Inventory

Contractor shall submit to Department a list of termination inventory not previously disposed of and excluding items authorized for disposition by Department; and within 30 Days of receipt of the list, Contractor shall deliver such inventory to Department and Department shall accept title to such inventory as appropriate.

26.4 Settlement Proposal

After termination, Contractor shall submit a final termination settlement proposal to Department in the form and with the certification prescribed by Department. Contractor shall submit the proposal promptly, but no later than 60 Days from the effective date of termination unless Contractor has requested a time extension in writing within such 60-Day period and Department has agreed in writing to allow such an extension.

26.5 Amount of Termination Settlement

Contractor and Department may agree, as provided in Section 26.4, upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the termination of Work pursuant to this Article 26. Such negotiated settlement may include an allowance for profit solely on Work which has been completed as of the termination date. In addition, Contractor shall be paid its reasonable costs of termination of Subcontracts and otherwise winding down the terminated Work. Such agreed amount or amounts payable for the terminated Work, exclusive of costs described in the prior sentence, shall not exceed the total Contract Price as reduced by the Contract Price of Work not terminated. Upon determination of the settlement amount this Contract will be amended accordingly, and Contractor will be paid the agreed amount as described in this Section 26.5. Nothing in Section 26.6, prescribing the amount to be paid to Contractor in the event that Contractor and Department fail to agree upon the whole amount to be paid to Contractor by reason of the termination of Work pursuant to this Article 26, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Contractor pursuant to this Section 26.5. Department’s execution and delivery of any settlement agreement shall not be deemed to affect any of its rights with respect to compliance of the completed Work with all applicable Contract requirements, any of its rights under the Performance Bonds or the Completion Guaranty or any of its rights against Subcontractors except to the extent expressly addressed in such settlement agreement. Upon determination of the amount of the termination payment, this Contract shall be amended to reflect the agreed termination payment, Contractor shall be paid the agreed amount, subject to the limitations contained herein on Department’s obligations to make payments, and the Contract Price shall be adjusted to deduct the portion thereof which is allocable to the terminated Work.
26.6 No Agreement as to Amount of Claim

In the event of failure of Contractor and Department to agree upon the amount to be paid Contractor by reason of the termination of Work pursuant to this Article 26, the amount payable (exclusive of interest charges) shall be determined in accordance with the following:

26.6.1 In the event this Contract is terminated prior to the issuance by the Department of the Notice to Proceed for Initial Engineering Work, no amounts shall be owed by the Department to the Contractor except for the payment set forth in Section 12.6 of the Comprehensive Agreement.

26.6.2 In the event this Contract is terminated on or after the issuance of the Notice to Proceed for Initial Engineering Work, but prior to the issuance of a Notice to Proceed for Section A Completion Work, the amount to be paid to Contractor for Work performed prior to the termination date shall be determined based on the CPM/Payment Schedule, subject in all events to the provisions of Section 14.2.1.

26.6.3 In the event this Contract is terminated on or after the issuance of the Notice to Proceed for Section Completion Work for any Project Section, the amount to be paid to Contractor for Work performed prior to the termination date shall be determined based on the CPM/Payment Schedule, subject in all events to the provisions of Section 14.2.1. In such event all invoices previously submitted, Change Orders requested and claims submitted shall be processed in accordance with the terms hereof (including payment of any Retainage). In addition, Contractor shall be paid its reasonable costs of termination of Subcontracts and otherwise winding down the terminated Work. However, the total amount to be paid to Contractor, exclusive of costs described in the prior sentence, may not exceed the total Contract Price less the amount of payments previously made. Furthermore, in the event that any refund is payable with respect to insurance premiums, deposits or similar items which were previously passed through to Department by Contractor, such refund shall be paid directly to Department or otherwise credited to Department.

26.6.4 Except for normal spoilage, and except to the extent that Department will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Contractor under 26.6.3, the fair value, as determined by Department, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Department, or to a buyer pursuant to Section 26.2.9.

26.7 Reduction in Amount of Claim

The amount otherwise due Contractor under this Article 26 shall be reduced by (a) the amount of any claim which Department may have against Contractor in connection with this Contract provided that Department has delivered to Contractor written notice thereof setting forth the specific grounds therefor and (b) the agreed price for, or the proceeds of sale of, materials, supplies or other things acquired by Contractor or sold, pursuant to the provisions of this Article 26, and not otherwise recovered by or credited to Department.

26.8 Payment

Department may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Contractor in connection with the terminated portion of this Contract, whenever in the opinion of Department the aggregate of such payments shall be within the amount to which Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article 26, such excess shall be payable by Contractor to Department upon demand together with interest at a variable rate.
per annum equal to the reference rate announced by Bank of America, NT&SA from time to time, plus 1%.

26.9 Inclusion in Subcontracts

Contractor shall insert in all Subcontracts that the Subcontractor shall stop Work on the date of and to the extent specified in a Notice of Termination from Department and shall require that Subcontractors insert the same provision in each Subcontract at all tiers. Contractor shall communicate, immediately upon receipt thereof, any Notice of Termination issued by Department to all affected Subcontractors.

26.10 No Consequential Damages

In the event of a termination for convenience under this Article 26, Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed plus its settlement costs (determined as provided in Section 26.6.1 or 26.6.2). Under no circumstances shall Contractor or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination for convenience under this Article 26. The payment to Contractor determined in accordance with this Article 26 constitutes Contractor’s exclusive remedy for a termination hereunder.

26.11 No Waiver

Anything contained in this Contract to the contrary notwithstanding, a termination under this Article 26 shall not waive any right or claim to damages which Department may have and Department may pursue any cause of action which it may have by law or under this Contract.

26.12 Dispute Resolution

The failure of the parties to agree on amounts due under Article 26, shall be a dispute to be resolved in accordance with Article 27.
ARTICLE 27. DISPUTE RESOLUTION

27.1 Dispute Review Board.

Any matter arising under this Contract may be brought to the Dispute Review Board established in accordance with the terms and conditions of Appendix 13 for nonbinding resolution. Within thirty (30) Days after execution of this Contract, Contractor and Department shall mutually select three individuals to serve on the Dispute Review Board. The Dispute Review Board shall meet at least quarterly, or at most monthly, as determined by either Department or Contractor. All costs in connection with the Dispute Review Board shall be paid in accordance with Appendix 13.

27.2 Submittal of Claims.

Disputes not resolved pursuant to Article 27.1 shall be resolved solely in accordance with Section 105.16 of the Standard Specifications attached hereto as Appendix 9. At all times during the term hereof, including during the course of and notwithstanding the existence of any dispute, (a) Contractor shall perform as directed by Department, in a diligent manner and without delay, shall abide by Department’s decision or order, and shall comply with all applicable provisions of the Contract Documents and (b) Department shall perform its obligations under this Contract in a diligent manner and without delay. It is understood and acknowledged by Contractor and Department that upon Final Acceptance of a Project Section, that portion of the Work shall be treated as a separate contract for purposes of Section 105.16 of the Standard Specifications.
ARTICLE 28. MISCELLANEOUS PROVISIONS

28.1 Incorporation of Miscellaneous Provisions in Comprehensive Agreement

The following provisions in the Comprehensive Agreement are applicable to the Contract Documents, provided that all references therein to the “Agreement” shall instead be deemed references to the Contract Documents unless the context requires otherwise:

Section 16.1 (Assignment)
Section 16.2 (No Gift or Dedication)
Section 16.3 (Notices)
Section 16.4 (Binding Effect)
Section 16.5 (Relationship of Parties)
Section 16.6 (No Third Party Beneficiaries)
Section 16.7 (Waiver)
Section 16.9 (Governing Law and Venue)
Section 16.11 (Survival)
Section 16.13(a) through (e) (Construction and Interpretation of Agreement)
Section 16.14 (Counterparts)

28.2 Entire Agreement; Amendment

28.2.1 THIS CONTRACT AND THE OTHER PROJECT AGREEMENTS CONSTITUTE THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN AND THEREIN. ALL PRIOR OR CONTEMPORANEOUS VERBAL OR WRITTEN AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND/OR PRACTICES RELATIVE TO THE FOREGOING ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS CONTRACT MAY BE ALTERED, AMENDED OR REVOLED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY 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.

28.2.2 This Contract and the other Project Agreements attempt to set forth in full all requirements applicable under the PPTA as to the study, planning, design, acquisition, development, construction, operation, maintenance, repair, management and financing of the Project and attempt to define in full the rights and responsibilities of each party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Contract and the other Project Agreements, the parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the PPTA, recognizing that they may not have defined in a sufficient detail or
anticipated fully all activities necessary for the full implementation of the Project.

28.2.4 If any provisions of this Contract are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Contract in any material respect.

28.3 Explanations; Omissions, Misdescriptions, Inclusions without Limitation

Should it appear that the Work to be done or any of the matters relative thereto is not sufficiently detailed or explained in the Contract Documents, Contractor shall apply to Department in writing for such further written explanations as may be necessary and shall conform to the explanation provided. Contractor shall promptly notify Department of all errors, omissions, inconsistencies or other defects (including inaccuracies and inconsistencies) which it may discover in the Contract Documents, provide written recommendations regarding changes or corrections to resolve any such error, omission or defect, and obtain Department’s approval before proceeding with the design Work affected thereby. Omission from the Scope of Work or the misdescription of details of Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Scope of Work, without entitlement to a Change Order hereunder. The words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation.”

28.4 Computation of Periods

If the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding Day which is a Business Day. However, the Guaranteed Completion Date shall not be extended thereby. The requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be performed as specified, even though the date in question may fall on a non-Business Day.

28.5 Approvals

In all cases where approvals, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.

28.6 NOT USED

28.7 Correspondence

Contractor shall copy Department on all written correspondence pertaining to this Contract between Contractor and any representative of the media or elected public official.
28.8 Standard Specifications

Cross-references to provisions of the Standard Specifications which are not applicable to this Contract because they have been superseded by other provisions of the Contract Documents shall be deemed references to the Contract Document provisions which have superseded the referenced Standard Specifications provisions.

Signatures on Following Page
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

“Department”  
VIRGINIA DEPARTMENT OF TRANSPORTATION,  
a department of the Commonwealth of Virginia

By: 
Commonwealth Transportation Commissioner

“Contractor”  
Kellogg Brown & Root, Inc.  
a Delaware corporation

By: 
Vice President
APPENDIX 1

DEFINITIONS
APPENDIX 3

FORM OF DRAW REQUEST AND CERTIFICATE
APPENDIX 4

FORM OF PAYMENT BOND
PAYMENT BOND
Coalfields Expressway

Know all men by these presents, that we, Kellogg Brown & Root, Inc., a Delaware corporation (hereinafter called the "Principal") and ________________________________ (hereinafter called the "Surety"), are held and firmly bound unto the Virginia Department of Transportation, a department of the Commonwealth of Virginia (hereinafter called the "Owner") (the "Obligee"), in the full and just sum of $____________, lawful money of the United States of America, to be paid to the Obligee, its successor and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally and firmly by these presents:

Whereas, the Principal has entered into a certain Design-Build Contract dated as of January 11, 2002, with the Owner (the "Contract"), which Contract is incorporated by reference herein; and

Whereas, it is one of the conditions of the Contract that these presents shall be executed.

Now, therefore, the condition of this obligation is such that if the Principal shall promptly pay all just claims for labor and material (including public utility services and reasonable rental of equipment when such equipment is actually used at the site) performed for or supplied to the Principal or any Subcontractor in the prosecution of the work contracted for, then this obligation is to be void; otherwise, to be and remain in full force and virtue in law.

No alteration, modification or supplement to the terms of the Contract or any Subcontract or the nature or the work to be performed thereunder, including any extension of time for performance, shall in any way affect the obligations of the Surety. The Surety waives notice of any alteration, modification, supplement or extension of time.

The Principal and Surety shall not be liable under this bond to the Obligee in the aggregate in excess of the penal sum stated above.

Witness, the signature of the Principal and the signature of the Surety and their corporate seals duly attached hereunto affixed this __________, 20__.  

Kellogg Brown & Root, Inc., 
a Delaware corporation (Surety Company)  

By: ____________________________  By: ____________________________  
   (SEAL) (SEAL)  

Title: ____________________________  Title: ____________________________  

(Assignment) (Address)  

[Add appropriate acknowledgments]
PERFORMANCE BOND
(Coalfields Expressway)

Know all men by these presents, that we, Kellogg Brown & Root, Inc. [Contractor] (hereinafter called the "Principal") and ________________________________ (hereinafter called the "Surety"), are held and firmly bound unto the Virginia Department of Transportation, a department of the Commonwealth of Virginia (hereinafter called the "Owner" or "Obligee"), in the full and just sum of $__________ [100% of Section A Completion Work Price] lawful money of the United States of America, to be paid to the Obligee, its successor and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally and firmly by these presents:

Whereas Contractor has entered into a certain Design-Build Contract dated as of _______ , with the Owner (the "Contract");

Whereas, it is one of the conditions of the Contract that these presents shall be executed.

Now, therefore, the condition of this obligation is such that if the Principal shall in all respects comply with the terms and conditions of the Contract and its obligations thereunder, including any and all amendments and supplements thereto, and shall indemnify and save harmless each Obligee against or from all costs, expenses, damages, injury or loss to which the Obligee may be subjected by reason of any wrongdoing, misconduct, want of care or skill, negligence or default, including patent infringement, delay or failure to comply with Contract provisions, on the part of the Principal, its agents or employees, in the execution or performance of the Contract, and shall pay all just claims for damages and injury to property then this obligation to be void; otherwise, to be and remain in full force and virtue in law.

No alteration, modification or supplement to the terms of the Contract or the nature or the work to be performed thereunder, including any extension of time for performance, shall in any way affect the obligations of the Surety. The Surety waives notice of any alteration, modification, supplement or extension of time.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee or the heirs, executors, administrators, successors or assigns of the Obligee.

The Principal and Surety shall not be liable to the Obligee or any of them if the Obligee or any of them has materially defaulted under their payment obligations to the Principal under the terms of the Contract.

The Principal and Surety shall not be liable under this bond to the Obligee in the aggregate in excess of the penal sum stated above.
Witness, the signature of the Principal and the signature of the Surety and their corporate seals duly attached hereunto affixed this __________, 20__. 

____________________________________  _________________________________________
(Contractor)                              (Surety Company)

By:_________________________________  By: ______________________________________
(SEAL)                                                                                     (SEAL)

Title:_______________________________  Title: _____________________________________

___________________________________  _________________________________________
(Address)                                                                     (Address)

[Add appropriate acknowledgments]
APPENDIX 6

SCOPE OF WORK
APPENDIX 7

DISADVANTAGED BUSINESS ENTERPRISE SUBCONTRACTING PLAN
APPENDIX 8

DESIGNATION OF INITIAL REPRESENTATIVES
DESIGNATION OF INITIAL REPRESENTATIVES

Department Representatives:

• Chief Engineer (currently Frank Gee)

Contractor Representatives:

• Charles S. Cox, Project Manager
APPENDIX 10

FEDERAL REQUIREMENTS
APPENDIX 11

MODIFICATIONS TO DEPARTMENT’S RIGHT OF WAY MANUAL OF INSTRUCTIONS
APPENDIX 12

ESCROW AGREEMENT - RETAINAGE
ESCROW AGREEMENT  
Coalfielsds Expressway Project

THIS ESCROW AGREEMENT (“Agreement”) is made and entered into as of _____________, 20__, by and among Virginia Department of Transportation (“Department”), Kellogg Brown & Root, Inc. (“Contractor”) and __________________ (“Escrow Agent”) with reference to the following facts:

A. Pursuant to the Design-Build Contract between Department and Contractor (the “Design-Build Contract”) for the Coalfielsds Expressway (“Project”), and the Comprehensive Agreement to Develop and Maintain the Coalfielsds Expressway (the “Comprehensive Agreement”) between Department and Contractor, Contractor is required to provide all relevant documents used to formulate its Fixed Price Amount for Section ______ of the Project.

B. As such, Contractor is submitting one copy of all information regarding the calculation of the Fixed Price Amount as required under Section 8 of the Design-Build Contract in sealed and labeled boxes (“Pricing Documents”); and

C. Department and Contractor wish to employ the services of Escrow Agent to act as the escrow holder with regard to the Pricing Documents for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Deposit.** Contractor hereby deposits with Escrow Agent the Pricing Documents. Escrow Agent hereby acknowledges receipt of such Pricing Documents, and such Pricing Documents shall be held in escrow under the terms and conditions of this Agreement.

2. **Holding of Pricing Documents.** Escrow Agent shall hold the Pricing Documents in escrow in a designated area on the premises of Escrow Agent located at __________________________ on a confidential basis. The Pricing Documents shall be stored in an area which is locked at all times. No third party, including the employees of the Escrow Agent, shall be allowed access to any of the Pricing Documents, provided that employees of Escrow Agent shall have access to the locked area for other purposes.

3. **Availability of Pricing Documents.** Escrow Agent shall make the Pricing Documents available as follows:

   Upon ten (10) Business Days written notice to Escrow Agent signed by both parties or upon receipt of a decision by the Dispute Resolution Board that the Pricing Documents shall be made available to the Parties, Pricing Documents will be made available during business hours for joint review by Department and Contractor in connection with the requirements of the Design-Build Contract. Department shall be entitled to make and retain copies of Pricing Documents in accordance with the terms of the Design-Build Contract provided that Department, as applicable, has executed and delivered to Contractor a confidentiality agreement in a form as provided in the Design-Build Contract.
4. **Rights of Escrow Agent.** If conflicting demands are made or notices served upon Escrow Agent with respect to this escrow, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:

   (a) rely upon a written direction of the Dispute Resolution Board;

   (b) withhold and stop all further proceedings in, and performance of this escrow;

   (c) file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves; or

   (d) deliver all Pricing Documents with seals intact to another location to be selected by the parties within 30 Days after Escrow Agent delivers to Department notice thereof.

5. **Release.** The Escrow Agent shall release the Pricing Documents and any other documents contained in the escrow upon receipt of written notice and certification for each of Department and Contractor that (i) 180 Days have elapsed from the last acceptance date of the Project or any earlier termination of the Design-Build Contract, (ii) all disputes regarding the Design-Build Contract have been resolved and (iii) final payment under the Design-Build Contract has been made and accepted. Contractor, at that time, will provide instruction to the Escrow Agent as to destruction and return requirements with respect to the Pricing Documents or other documentation held in the escrow.

6. **Fees.** Department shall be responsible for any escrow fees until the release as specified above. If Contractor fails to deliver instructions under Section 6, Contractor shall pay any fees accruing thereafter.

7. **Notices.** All notices which may be or are required to be given or made by either party hereto to the other shall be in writing. Such notices shall be either personally delivered or sent by registered mail, postage prepaid, to:

   If to Contractor:
   
   If to Department:
If to Escrow Agent:


Attention: __________________________

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

8. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

9. **Headings.** The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

10. **Governing Law.** The laws of the Commonwealth of Virginia shall govern this Agreement.

11. **Amendment.** This Agreement may not be amended or modified except by a written amendment signed by each party.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

KELLOGG BROWN & ROOT, INC.

By: ________________________________
Name: ______________________________
Title: ______________________________

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: ________________________________
Name: ______________________________
Title: ______________________________
The escrow provided for in this Agreement is hereby accepted, only to the extent of the escrow provisions, By Escrow Agent.

________________________

By: _________________________
Title: _________________________
DESIGN-BUILD CONTRACT:
Section A Supplement
Coalfields Expressway

Dated as of _____, ____

by and between

VIRGINIA DEPARTMENT OF TRANSPORTATION,
a department of the Commonwealth of Virginia

and

KELLOGG BROWN & ROOT, INC.
a Delaware corporation
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1.</td>
<td>1.3.1</td>
<td>Section A Completion Work CPM/Payment Schedule</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1.3.2</td>
<td>Section A Baseline Engineering</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1.3.3</td>
<td>Section A Plan of Finance</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1.3.4</td>
<td>Section A Mine Inventory</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1.5</td>
<td>Acceptance of Site Conditions</td>
<td>1</td>
</tr>
<tr>
<td>ARTICLE 2.</td>
<td>2.1</td>
<td>Section A Completion Work Responsibilities</td>
<td>3</td>
</tr>
<tr>
<td>ARTICLE 14.</td>
<td>14.1.2</td>
<td>Section A Completion Work Price</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>14.1.2.1</td>
<td>Section A Completion Work Price</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>14.1.2.2</td>
<td>Right of Way and ROW Allowance</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>14.1.2.3</td>
<td>Environmental Mitigation Allowance</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>14.1.2.4</td>
<td>Costs in Excess of Allowance</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>14.1.3</td>
<td>Payment</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>14.1.4</td>
<td>Items Included in Contract Price</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>14.5</td>
<td>Contractor Pricing Documents</td>
<td>5</td>
</tr>
<tr>
<td>ARTICLE 17.</td>
<td>17.2</td>
<td>Guaranteed Completion</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>17.2.1</td>
<td>Deadlines for Final Acceptance of Section A</td>
<td>6</td>
</tr>
<tr>
<td>ARTICLE 22.</td>
<td>22.3</td>
<td>Property Insurance</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>22.6</td>
<td>Performance and Payment Bonds</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>22.7</td>
<td>Completion Guaranty</td>
<td>7</td>
</tr>
<tr>
<td>ARTICLE 25.</td>
<td>25.6</td>
<td>Liquidated Damages</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>25.6.1</td>
<td>Amount</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>25.6.2</td>
<td>Payment Terms</td>
<td>8</td>
</tr>
</tbody>
</table>
APPENDICES TO SECTION A SUPPLEMENT

Appendix 15 – Section A CPM/Payment Schedule  
Attachment A – Maximum Payment Curve for Section A Completion Work

Appendix 16 – Not Used

Appendix 17 – Not Used

Appendix 18 - Not Used

Appendix 19 – Section A Baseline Engineering

Appendix 20 – Plan of Finance

Appendix 21 – Section A Mine Inventory
This document (the “Section A Supplement”) contains certain requirements applicable to the Section A Completion Work to be performed under that certain agreement entitled Design-Build Contract for the Coalfields Expressway, entered into by and between the Virginia Department of Transportation and Kellogg Brown & Root, Inc. The Section A Supplement shall be interpreted as provided in the Design-Build Contract. Definitions of words and phrases contained in Appendix 1 to the Design-Build Contract and in Division 1 of the Standard Specifications attached to the Design-Build Contract as Appendix 9 shall also apply to the Section A Supplement. All Section references contained herein are to the Design-Build Contract unless otherwise specified herein.

ARTICLE 1. ADDITIONAL SECTION A CONTRACT DOCUMENTS; ACCEPTANCE OF SITE CONDITIONS

Refer to Article 1 of Design-Build Contract except as set forth below.

1.3.1 Section A Completion Work CPM/Payment Schedule

The initial Section A CPM/Payment Schedule accepted by the Department is attached hereto as Appendix 15. The Maximum Payment Curve for Section A approved by the Department is attached as Attachment A to the CPM/Payment Schedule.

1.3.2 Section A Baseline Engineering

The Section A Baseline Engineering prepared by Contractor and approved by the Department has been delivered to the Department and an index thereto is attached hereto as Appendix 19.

1.3.3 Section A Plan of Finance

The Section A Plan of Finance accepted by the Department is attached hereto as Appendix 20.

1.3.4 Section A Mine Inventory

The Section A Mine Inventory prepared by Contractor is attached hereto as Appendix 21.

1.5 Acceptance of Site Conditions

1.5.1 Contractor has reviewed the Scope of Work and carefully evaluated the feasibility of performing the Section A Completion Work within the deadlines specified in Section 17.2 of this Section A Supplement and for the Section A Completion Work Price specified in Section 14.1.2 of this Supplement, without relying on any matter supplied by the Department other than the Contract Documents, and has reasonable grounds for believing and does affirmatively believe that such performance (including achievement of Final Acceptance by the Guaranteed Completion Date for the Section A Completion Work Price specified herein) is feasible and practicable.

1.5.2 Contractor agrees, that it has inspected and examined the Section A Site and surrounding locations and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions discernible from the surface affecting the Section A and the
geotechnical reports prepared by Contractor to the extent Contractor deemed necessary or advisable for pricing the Section A Completion Work, and as a result of such review, inspection, examination and other activities Contractor is familiar with and accepts the physical requirements of the Section A Completion Work, subject to the provisions of Articles 5 and 19 of the Design-Build Contract regarding Site Conditions. Contractor further acknowledges and agrees that changes in conditions at the Site may occur after the date hereof, and that Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under Article 19 of the Design-Build Contract.
ARTICLE 2. CONTRACTOR’S SECTION A COMPLETION WORK RESPONSIBILITIES

Refer to Article 2 of Design-Build Contract except as set forth below.

2.1 Section A Completion Work

Contractor shall furnish the final design of Section A of the Project, and shall construct Section A of the Project all in accordance with the terms and conditions set forth in the Contract Documents and the Section A Baseline Engineering attached to this Section A Supplement as Appendix 19. Except as otherwise provided in the Contract Documents, following the Notice to Proceed for the Section A Completion Work (NTP-A), all materials, services and efforts necessary to achieve Final Acceptance of Section A of the Project on or before the deadlines provided in this Section A Supplement shall be Contractor’s sole responsibility; and, subject to the terms of Article 19 of the Design-Build Contract, the cost of all such materials, services and efforts shall be included in the Section A Completion Work Price.
ARTICLE 14. COMPENSATION

Refer to Article 17 of the Design-Build Contract except as set forth below.

14.1.2 Section A Completion Work Price

14.1.2.1 Section A Completion Work Price

As full compensation for the Section A Completion Work and all other obligations to be performed by Contractor under the Contract Documents with respect to Section A (other than the Initial Engineering Work with respect to Section A), and subject to the limitations contained herein, Contractor shall be paid the sum of $________ (such amount, as it may be adjusted from time to time as provided herein, is referred to herein as the “Section A Completion Work Price”). The Section A Completion Work Price is made up of the following items:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>$___________</td>
<td>Fixed Price Amount</td>
</tr>
<tr>
<td>$._________</td>
<td>ROW Allowance</td>
</tr>
<tr>
<td>$___________</td>
<td>Environmental Mitigation Allowance</td>
</tr>
<tr>
<td>$____________</td>
<td>Total Section A Completion Work Price</td>
</tr>
</tbody>
</table>

14.1.2.2 Right of Way and ROW Allowance

The Contract Price includes the ROW Allowance in the amount of $______ for Section A Right of Way Work under Article 6. Contractor’s costs for Section A Right of Way acquisition Work will be reimbursed from the ROW Allowance until the ROW Allowance has been exhausted. Reimbursable costs shall be limited to: (i) direct payments for ownership or other property rights; (ii) direct payments for eligible relocation expenses as provided for under the Uniform Act; (iii) attorneys’ fees, filing fees, and deposition costs and expenses arising from condemnation proceedings; and (iv) expenses incurred to cure or avoid damages proximately related to the acquisition of the rights of way. Contractor shall not be entitled to payment for overhead allocations, profit or other mark-up by Contractor on the cost of such Work. Contractor shall also not be entitled to reimbursement for the expense of appraisers, land agents, title searches and right of way agents, or any other costs not enumerated in clauses (i) through (iv) above, which shall be included in the Fixed Price Amount.

14.1.2.3 Environmental Mitigation Allowance

The Contract Price includes an Environmental Mitigation Allowance in the amount of $______ for Section A Environmental Mitigation Work as directed by the Department. Contractor’s costs for Environmental Mitigation Work will be reimbursed from the ROW Allowance until the ROW Allowance has been exhausted. Compensation shall be based on time and materials as set forth in Section 19.5.2.1 without markup for overhead or profit.
14.1.2.4 Costs in Excess of Allowance

If the ROW Allowance, Environmental Mitigation Allowance is depleted, Department shall pay any excess to the extent of funds available to the Department for the Section A of the Project, including from any unused amounts in any other Allowance. Provided, however, the parties understand that if any such funds are not available, Department may elect to suspend or terminate the Section Completion Work for Section A of the Project in accordance with Article 26.

14.1.3 Payment

The Section A Completion Work Price shall be paid in accordance with Section 14.2. The Section A Completion Work Price shall be increased only in accordance with Article 19 of the Design-Build Contract.

14.1.4 Items Included in Contract Price

Contractor acknowledges and agrees that, subject only to Contractor’s rights under Article 19 of the Design-Build Contract, the Contract Price includes (a) all designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and all other overhead, profit and services relating to Contractor’s performance of its obligations under the Contract Documents (including all Work, equipment, materials, labor and services provided by Subcontractors); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Regulatory Approvals (except as provided otherwise in Section 10.3); and (d) payment of any duties, permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein. Contractor further acknowledges and agrees that all such costs are payable out of the Fixed Price Amount portion of the Contract Price unless expressly provided otherwise.

14.5 Contractor Pricing Documents

Prior to execution of this Supplement, Contractor has delivered into the escrow established under Article 8 certain pricing documents. Contractor represents and warrants that the pricing documents (a) were personally examined prior to delivery by an authorized officer of Contractor, (b) clearly detail how the Contract Price for the Section Completion Work for Section A was determined and is adequate to enable a complete understanding and interpretation of how Contractor arrived at the Contract Price for the Section Completion Work for Section A, and (c) includes all assumptions, detailed quantity takeoffs, rates of production and progress calculations, cost estimates and quotes from Subcontractors and suppliers used by Contractor to arrive at the Contract Price for the Section Completion Work for Section A.
ARTICLE 17. TIME FOR COMPLETION; SUBSTANTIAL COMPLETION

Refer to Article 17 of the Design-Build Contract except as set forth below.

17.2 Guaranteed Completion

17.2.1 Deadlines for Final Acceptance of Section A

Contractor shall achieve Final Acceptance of Section A on or before the date which is ____ Days after the Section A Completion Work Notice to Proceed which date as it may be extended by Change Order, is referred to herein as the “Guaranteed Completion Date.” Failure to achieve Final Acceptance by the Guaranteed Completion Date will result in the application of Liquidated Damages in accordance with Section 25.6 of this Section A Supplement.
ARTICLE 22. INSURANCE AND BONDING

Refer to Article 22 of the Design-Build Contract except as set forth below.

22.3 Property Insurance

22.3.3 Prior to the execution of this Section A Supplement, Contractor has obtained property insurance with respect to the construction of Section A meeting the requirements of Section 22.3 of the Design-Build Contract.

22.6 Performance and Payment Bonds

22.6.1 Concurrently with execution of this Section A Supplement, Contractor has provided to Department a Payment Bond with respect to the Section A Completion Work in the amount of 100% of the Section A Completion Work Price and in the form attached to the Design-Build Contract as Appendix 4. The Payment Bond shall remain in full force and effect until the later to occur of one year after the Final Acceptance Date for Section A or resolution of all claims filed thereunder. Contractor has also provided to Department a Performance Bond in the amount of 100% of the Section A Completion Work Price, in the form attached hereto as Appendix 5 to the Design-Build Contract. The Performance Bond shall remain in full force and effect until the final expiration of all Warranties with respect to the Section A Completion Work.

22.6.2 The Payment and Performance Bonds shall be executed by either Contractor and a surety company authorized to do business in the State in accordance with the laws of the State and the rules and regulations of the State Corporation Commission. In order to be considered properly executed, the bonds shall include authorized signatures and titles.

22.6.3 In lieu of Payment or Performance Bonds, Contractor may furnish a certified check or cash escrow in the face amount required for each of the bonds, which will be held for the full period as applicable for each bond.

22.6.4 After Final Acceptance of Section A, the Performance Bond with respect to Section A may be reduced to an amount not less than 20% of the original amount thereof or replaced by a warranty bond.

22.7 Completion Guaranty

Concurrently with execution of this Contract, Contractor has provided to Department an amendment to the Completion Guaranty with respect to the Section A Completion Work in the form attached as Exhibit E to the Comprehensive Agreement, executed by Halliburton Company (the "Guarantor").
ARTICLE 25. DEFAULT-LIQUIDATED DAMAGES

Refer to Article 25 of the Design-Build Contract except as set forth below.

25.6 Liquidated Damages

Contractor and Department have agreed to liquidate damages incurred by Department with respect to any delay in achieving Final Acceptance of Section A by the deadlines contained in Section 17.2.1 of the Section A Supplement. Contractor acknowledges and agrees that the Liquidated Damages are intended to constitute compensation solely for Contractor’s failure to meet the completion deadlines, and shall not excuse Contractor from liability for any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. If an Event of Default consists solely of Contractor's failure to achieve Final Acceptance by the Guaranteed Completion Date, then the damages recoverable by Department shall be limited as provided in Section 25.3.2.

25.6.1 Amount

25.6.1.1 Contractor agrees to pay Department the amount of $2000 per day up to a maximum of $500,000 as deemed compensation to Department for damages which it incurs due to delay in completion, for each day after the Guaranteed Completion Date through the date of Final Acceptance.

25.6.1.2 It is understood and agreed by Contractor that any Liquidated Damages payable in accordance with this Section 25.6 of this Section A Supplement are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of this Contract. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred or been declared.

25.6.2 Payment Terms

If Department determines that Liquidated Damages are owing, Department shall give written notice thereof to Contractor. Thereafter, each Draw Request and Certificate under Section 14.2.2 shall include a calculation of Liquidated Damages occurring since the prior request (or since the notice if there has been no prior request) and that amount will automatically be due on or prior to submission of such request if not paid by offset under Section 14.4.
“Department”
VIRGINIA DEPARTMENT OF TRANSPORTATION,
a department of the Commonwealth of Virginia

By: ______________________________________
Commonwealth Transportation Commissioner

“Contractor”
Kellogg Brown & Root, Inc.
a Delaware corporation

By: ______________________________________
Authorized Representative
EXHIBIT A

DEFINITIONS

Agreement Date, for purposes of the Comprehensive Agreement, means the date written on the cover page of the Comprehensive Agreement, and for purposes of the Design-Build Contract, means the date written on the cover page of the Design-Build Contract.

Authorized Department Representative means any person designated to act on behalf of Department by a certificate signed by the Commissioner and filed with KBR.

Authorized KBR Representative means any person designated to act on behalf of KBR by a certificate signed by its President or any Vice President and filed with Department.

Baseline Engineering means the Work undertaken under the first plan development milestone (Preliminary Field Inspection) as described under “PLAN DEVELOPMENT—Preliminary Field Inspection Plans” in Attachment C to Appendix 6 to the Design-Build Contract, including preparation and delivery to the Department of Preliminary Field Inspection Plans, Preliminary Soils Report, Preliminary Stormwater Management Report, Preliminary Erosion & Sediment Control Report, Concept Bridge Plans (TSL), and Preliminary Roadside Development Report.

Bond Counsel means any attorney or firm of attorneys, selected by the issuer of bonds (the proceeds of which are used to finance the Project) and acceptable to the Department, whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

Business Day means any Day other than a Saturday, Sunday or other day on which The New York Stock Exchange or banks are authorized or required to close in New York, New York or Richmond, Virginia.

Change Order means a written amendment to the terms and conditions of the Contract Documents issued in accordance with Article 19 of the Design-Build Contract.

Claims means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses, including any expenses of the Department resulting from a violation by any Contractor Party of Laws, Regulations and Ordinances in connection with or relating to the Project or the Work.
CMMR Contractor means the contractor engaged by the Department to perform CMMR Services.

CMMR Services shall have the meaning set forth in Section 6.5.6 of the Design-Build Contract.

Code means the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations proposed or in effect with respect thereto.

Commissioner means the Commonwealth Transportation Commissioner or any successor in function.

Completion Guaranty means the Guaranty of Performance and Completion issued by Halliburton Company on the Agreement Date in the form of Exhibit E to the Comprehensive Agreement, guaranteeing payment, performance and completion of all of KBR’s obligations under the Comprehensive Agreement and the Design-Build Contract, as such Completion Guaranty shall be amended and supplemented in accordance with the Comprehensive Agreement and the Design-Build Contract.

Comprehensive Agreement means the Comprehensive Agreement to Develop and Maintain Coalfields Expressway between KBR and Department dated as of January 11, 2002 and all exhibits thereto, as supplemented or amended from time to time.

Conformity means compliance with the most stringent customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, conformity means compliance with the most stringent of such tolerances.

Construction Documents means all Shop Drawings and Working Drawings, catalog cuts and samples necessary for construction of the Project in accordance with the Contract Documents and to inspect that construction.

Construction Segment means each or any segment of a Project Section which Department and KBR designate pursuant to Article 13 of the Design-Build Contract for the purpose of scheduling construction.

Construction Traffic Management Plan means the plan for traffic management submitted and approved in accordance with Section 9.1 of the Design-Build Contract.

Contract Documents means the Design-Build Contract, including all appendices and Section Supplements, the Completion Guaranty, the Scope of Work, the Standard Specifications, the Baseline Engineering with respect to Section A and the Initial Engineering Work with respect to Sections B, C and D(subject to Contractor’s obligation to provide the Plans and Specifications free
of any errors, omissions, inconsistencies and other defects which may be contained in the Baseline Engineering or Initial Engineering Work and the Plans and Specifications, including all amendments to any of the foregoing and all Change Orders issued.

**Contractor** means KBR.

**Contractor Claim** means a separate demand by Contractor for (a) a time extension which is disputed by Department, or (b) payment of money or damages arising from work done by or on behalf of Contractor in connection with the Design-Build Contract which is disputed by Department. A Contractor Claim will cease to be a Contractor Claim upon resolution thereof, including resolution by withdrawal or release thereof or delivery of a Change Order or Design-Build Contract amendment signed by all parties.

**Contractor Party** means and includes Contractor, any Person obligated under the Completion Guaranty, any Related Party, contractor (other than Department), subcontractor (other than Department) at any tier or any representative of Contractor or any Related Party.

**Contract Price** means the sum of (a) the Initial Engineering Price and (b) the Section Completion Work Price established under any and all executed Section Supplements.

**CPM/Payment Schedule** means the most current schedule for the Project approved by Department as described in Section 13.3 of the Design-Build Contract.

**Critical Path** means the longest non-intermittent path between the first and the last event of the Project shown on the CPM/Payment Schedule (or, if more than one such path exists, each such path).

**CTB** means the Commonwealth Transportation Board, a state board of the State affiliated with the Department of Transportation.

**Days** means calendar days, unless otherwise designated.

**Defect** means, with respect to each element or aspect of the Work for which acceptable tolerances are specified in the Contract Documents, any such element or aspect not conforming to such specified tolerances, and with respect to each element or aspect of the Work for which acceptable tolerances are not specified in the Contract Documents, any such element or aspect not conforming to industry standards applicable thereto as of the time such element or aspect of the Work is undertaken; provided that in all instances “Defect” includes any element or aspect of the Work not conforming to the Design-Build Contract, Plans and Specifications, Laws, Regulations and Ordinances or Regulatory Approvals.
Department means the Virginia Department of Transportation, a department of the State, and any other State agency succeeding to the powers, authorities and responsibilities of Department invoked by or under the Comprehensive Agreement.

Department-Caused Delays means delays, to the extent that they affect a Critical Path and which the Contractor could not have reasonably mitigated (without additional cost to Contractor), arising from the following matters and no others: (a) a suspension order pursuant to Section 20.1 of the Design-Build Contract to the extent the same is treated as a Department-Caused Delay thereunder, (b) Directed Changes, (c) failure of Department to provide responses to submittals and matters for which response by such Person is required, within the time periods indicated in the Contract Documents, (d) uncovering, removing and restoring Work, to the extent provided in Section 5.2.2.5 of the Design-Build Contract, (e) any improper failure to act by Department within a reasonable time after delivery of notice by Contractor to Department requesting such action or (f) failure of a CMMR Contractor to perform services in a timely basis in accordance with its contract or its failure to obtain a CMMR Hazardous Substance Regulatory Approval within the time provided for in the approved CPM/Payment Schedule. Any court order to suspend Work shall not be considered a Department-Caused Delay (although it may qualify as a Force Majeure event) despite the fact that Department may specifically direct Contractor to comply with the court order.

Department Default shall have the meaning set forth in Section 17.7 of the Comprehensive Agreement.

Department Standards means the requirements applicable to performance of the Work contained in the manuals, standards and procedures set forth in the Contract Documents.

Design-Build Contract means the Design-Build Contract between Department and KBR dated as of January 11, 2002 a copy of which is attached to the Comprehensive Agreement as Exhibit C, and any and all Section Supplements, amendments and supplements thereto.

Differing Site Condition means, subject to the limitations in the next paragraph, any permanent condition on, within, under or of the Project Right of Way differing materially from those identified in the Baseline Engineering with respect to Section A and in the Initial Engineering with respect to Section B, C, and D and not apparent from a reasonable visual inspection.

With respect to the following conditions, Differing Site Condition means: (i) with respect to caverns and mines, any unknown cavern or mine that is not recorded in the records of federal, state or local agencies, listed in available coal company records and DMME database or within Contractor’s actual knowledge; (ii) with respect to Pre-existing Hazardous Substances, any such substances that have not been identified or revealed during a Transaction Screen Process,
Phase I Environmental Investigations and/or geotechnical subsurface investigations of the Project Site performed in accordance with Article 6 and Appendix 6 of the Design-Build Contract; (iii) with respect to unknown existing Utilities, only any such Utility not owned by a public utility company; and (iv) with respect to miscellaneous underground obstructions and conditions, underground archeological, paleontological or cultural resources, unmarked and unidentified grave sites, consolidated and unconsolidated sulfidic geologic materials and unusual underground water conditions that affect wells or other sources of water supplies. A Differing Site Condition shall not be deemed to exist, and KBR shall have no claim, with respect to the general nature, stability and/or character of excavation materials encountered on the Project Site, including excavation of bridge piers and abutments and foundation design changes resulting therefrom. A Differing Site Condition shall be deemed to include all manifestations of the same condition.¹

**Directed Change** means any change in the Work (including changes in the standards applicable to the Work) which Department has directed Contractor to perform by Directive Letter pursuant to Section 19.3.1 of the Design-Build Contract or by Change Order under Section 19.3.2 of the Design-Build Contract. The term shall also include changes in the Work which are directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by Department. The fact that Department has delivered a Directive Letter does not necessarily mean that a change in the Work has occurred.

**Directive Letter** means each letter issued by Department pursuant to Section 19.3.1 of the Design-Build Contract.

**Dispute** means a controversy, matter in question, or difference of opinion that remains unresolved following good faith negotiations between representatives of Department and Contractor. Disputes may include such matters as Change Orders, interpretation of the Contract, Contract Documents, costs, time for performance and Differing Site Conditions. Disputes eligible for submission to the Dispute Review Board shall not include insurance requirements and compliance, claims on bonds, enforcement of Warranties and indemnities, exercise of remedies and rights to termination.

**Dispute Review Board** means the Dispute Review Board established pursuant to Section 27.1 and Appendix 13 of the Design-Build Contract.

¹/ For example, if a given geologic formation or unknown cavern or mine is continuous and affects the Project Right of Way in more than one location, all such locations are together part of the same “condition.” Conversely, if, for example, a location is affected by a geologic fault and a nearby location is affected by a rock formation, each would be a separate “condition.” Similarly, each and every discrete archeological site would be a separate “condition.”
Draft Plans and Specifications means all drawings (including plans, elevations, sections, details and diagrams) furnished by Contractor showing the sizes, shapes and location of component elements comprising the Project and all specifications, reports, calculations, records and submittals necessary for design of the Project furnished by Contractor as described in Article 3 of the Design-Build Contract.

Draw Request means a draw request from KBR on the Draw Request and Certificate form attached as Appendix 3 to the Design-Build Contract.

EIS means that certain signed final environmental impact statement, whose record of decision for the Project was approved by FHWA on November 13, 2001.

Environmental Laws means all Laws, Regulations and Ordinances now or hereafter in effect during the term of Contract relating to the environment or to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment including into the air, surface water or ground water or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater and air) including the statutes listed in the definition of Hazardous Substances; the National Environmental Policy Act, as amended, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.; the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. §§ 1801 et seq.; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.; and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.

Environmental Mitigation Work means mitigation of wetlands required to comply with the terms and conditions of the EIS and applicable water quality permit.

Event of Default, for purposes of the Design-Build Contract, shall have the meaning set forth in Section 25.1 of the Design-Build Contract.

Final Acceptance means the occurrence of the events described in subsections (a) through (j) inclusive of Section 18.2.1 of the Design-Build Contract.

Final Acceptance Date means the date on which Final Acceptance occurs under the Design-Build Contract.

Fiscal Year means the consecutive 12-month period beginning July 1 and ending June 30, or any other consecutive 12-month fiscal period used by Department for financial accounting purposes.
**Fixed Price Amount** means the Fixed Price Amount described in Section 14.1.1 of the Section A Supplement and the corresponding Section of any Supplement related to Project Sections, B, C and D.

**Force Majeure** means any of the following events (provided such events are beyond the control of Contractor and are not due to an act or omission of Contractor) which materially and adversely affects Contractor’s obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by Contractor:

(a) any tidal wave, hurricane force wind, flood, tornado or earthquake;

(b) any epidemic, blockade, rebellion, war, riot or act of sabotage, terrorism or civil commotion;

(c) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence, except as excluded under subsection (iii) below;

(d) any unreasonable delay by a utility owner in connection with a Utility Relocation;

(e) any change in or new enactment of any written Laws, Regulations and Ordinances, or change in the judicial or administrative interpretation of, or adoption of any new Laws, Regulations and Ordinances which is materially inconsistent with Laws, Regulations and Ordinances in effect on the Agreement Date (subject to the exclusions set forth below);

(f) any suspension of the Work to the extent permitted under Section 25.4 of the Design-Build Contract; and

(g) any court order which restrains, enjoins, challenges or delays performance of the Work or the granting or renewal of any Regulatory Approval, including any order delaying completion of condemnation proceedings or relocation beyond the time periods provided by law.

The term "Force Majeure" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered force majeure:

(i) fire or other physical destruction or damage, including lightning, explosion, drought, rain, storm or action of the elements or other acts of God not listed in subsection (a) above;

(ii) except as provided in subsection (b) above, explosion, malicious or other acts or similar occurrence;
(iii) strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence particular to a Contractor Party or the Project except any such event affecting a Suppliers’ work solely at locations other than the Project site;

(iv) the presence at, near or on the Site of any Hazardous Substance;

(v) the presence at, near or on the Site of any archaeological, paleontological or cultural resource or endangered species;

(vi) Differing Site Conditions;

(vii) the suspension, termination, interruption, denial or failure to obtain or non-renewal of any permit, license, consent, authorization or approval which is necessary for the performance of the Work or the operation or maintenance of the Project, except for any such matter resulting from a lawsuit by any utility that unreasonably delays a Utility Relocation;

(viii) a change in any Laws, Regulations and Ordinances (such as increases in tax rates) which causes an increase in amounts payable by Contractor for deliverables but which does not change the obligations to be performed by Contractor hereunder;

(ix) any lawsuit relating to any Regulatory Approval which is Contractor’s risk under Article 10 of the Design-Build Contract, except as provided in subsection (e) above;

(x) Directed Changes;

(xi) any cost risk (including cost of delay) for which coverage is to be provided through insurance required hereunder; and

(xii) all other matters not caused by Department or beyond the control of Department and not listed in subsections (a) through (g) above.

**Guaranteed Completion Date** shall have the meaning set forth in Section 17.2.1 of the Design-Build Contract.

et seq., Virginia Waste Management Act, §10.1-1400 et seq., Code of Virginia (1950) as amended, all as amended or as may be amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum or crude oil or products thereof other than petroleum and petroleum products which are contained within regularly operated motor vehicles, (d) asbestos and (e) radioactive wastes and substances. Hazardous Substance shall not be deemed to include consolidated and unconsolidated sulfidic geological materials.

**Implementation Guidelines** means the Implementation Guidelines under the PPTA adopted by the Commissioner on July 1, 1995 governing the selection of Qualifying Transportation Facilities under the purview of Department, as such Implementation Guidelines may be amended or supplemented.

**Initial Engineering Price** has the meaning set forth in Section 14.1.1 of the Design-Build Contract.

**Initial Engineering Work** means the Initial Engineering Scope of Work described in Appendix 2 to the Design-Build Contract.

**Initial Execution Date** means the date of execution by the Department and KBR of the Comprehensive Agreement and the Design-Build Contract.

**Inspection** means the act of viewing or looking carefully at construction, manufacturing and design and maintenance practices, processes and products, including document control and Shop Drawing review, to ensure the practices, processes and products comply with the quality requirements contained in the Contract Documents.

**KBR** means Kellogg Brown & Root, Inc., a Delaware corporation.

**KBR Default** shall have the meaning set forth in **Section 17.1** of the Comprehensive Agreement.

**KBR Indemnitee** means and includes KBR and all of its parents, affiliates and subsidiaries.

**Laws, Regulations and Ordinances** means all applicable laws, codes, rules, ordinances, restrictions and regulations of the federal, State, regional or any local government (including those resulting from the initiative or referendum process) and judicial or administrative orders.

**Lien** means any pledge, lien, mechanic’s or material worker’s lien, security interest, mortgage, deed of trust or other charge or encumbrance of any
kind, or any other type of preferential arrangement (including any agreement to
give any of the foregoing, any conditional sale or other title retention agreement,
any lease in the nature of a security instrument and the filing of or agreement to
file any financing statement under the Virginia Uniform Commercial Code).

**Liquidated Damages** shall have the meaning set forth in Section 25.6 of
the Design-Build Contract.

**Maximum Payment Curve** means, with respect to the Initial Engineering
Work, the "Maximum Payment Curve" attached as Attachment A to the approved
CPM/Payment Schedule, and, with respect to the Section Completion Work for
any Project Section, the Maximum Payment Curve approved in writing by the
Department and Contractor and attached to the CPM/Payment Schedule
attached as an Appendix to the Section Supplement with respect to such
Section. The Maximum Payment Curve shall reflect the amount of funds
reasonably expected by the Department to be available for payment of Project
costs in accordance with the Plan of Finance. The Maximum Payment Curve
shall not include proceeds from the issuance of bonds until such bonds have
been issued.

**NEPA** means the National Environmental Policy Act, 42 U.S.C. § 4321 et
seq., as amended and as it may be amended from time to time.

**Notice to Proceed** means a notice issued by Department authorizing
Contractor to commence Initial Engineering Work or Section Completion Work
as specified in Section 3.1.1 or 4.1.1, respectively, of the Design-Build Contract.

**Notice of Proposed Change/Direction** means a notice issued by
Department concerning a possible Change Order, as specified in Section 19.3.2
of the Design-Build Contract.

**Notice of Termination** means a notice issued by Department to terminate
the Design-Build Contract and the performance of the Work by Contractor
pursuant to Article 26 of the Design-Build Contract.

**Payment Bond** means the payment bond described in Section 22.6 of the
Design-Build Contract.

**Performance Bond** means each performance bond to be provided by a
Subcontractor as described in Section 22.6 of the Design-Build Contract.

**Person** means any individual, public or private corporation, county,
district, authority, municipality, political subdivision or other entity of the State or
the United States of America, and any corporation, limited liability company,
partnership, association, firm, trust, estate, or any other entity whatsoever.
Phase I Environmental Investigation means a study that meets the requirements of 42 U.S.C. Section 9601 (35) (B), as amended and at a minimum, meets the requirements of ASTM Standard 1527-97.

Phase II Environmental Investigation means a study that meets the requirements of 42 U.S.C. Section 9601 (35) (B), as amended and at a minimum, meets the requirements of ASTM Standard 1903-97.

Plan of Finance means, as to any related Project Section of the Project, the definitive Plan of Finance accepted by the Department referred to in Article VI of the Comprehensive Agreement.

Plans and Specifications means the 100% completed maps, plans, drawings and specifications for different components of the Work as approved by Department’s Chief Engineer and bearing the seal of a Virginia licensed engineer.

PPTA means the Public-Private Transportation Act of 1995, which is codified as Title 56, Chapter 22, Section 56-556 et seq., Code of Virginia, as amended from time to time.

Pre-Existing Hazardous Substances means any Hazardous Substance that was present within the Project Right of Way limits prior to acquisition of the property for the Project, and which was not placed or deposited there by either Contractor or Department.

Project means (a) all improvements constituting the Coalfields Expressway as generally described in the Scope of Work, and (b) all other improvements and other Work Product to be provided by Contractor as a condition to Final Acceptance in accordance with the Contract Documents, including all replacement wetlands and other off-site improvements required by applicable Law, Regulations and Ordinances and Regulatory Approvals.

Project Agreement means any of the Comprehensive Agreement, the Contract Documents, and any maintenance agreement to which KBR becomes a party pursuant to Article VIII of the Comprehensive Agreement and any bonds, indentures and other contracts entered into in accordance with the definitive Plan of Finance for any Section; and the term "Project Agreements" means all such agreements and documents in the aggregate.

Project Manager shall have the meaning set forth in Section 2.2.3 of the Design-Build Contract.

Project Purposes means and is limited to the developing, permitting, design, financing, acquisition, construction, installation, equipping, maintenance and repair of the Project. Project Purposes exclude, however, any activities associated with Reserved Rights.
**Project Right of Way** means all real property (which term is inclusive of all estates and interests in real property) which is necessary for ownership and operation of the Project by Department. The term specifically includes all property within the access control line for the Project. The term specifically excludes any temporary easements or other real property interests which Contractor deems necessary or advisable in connection with construction of the Project and/or Utility Relocations.

**Punch List** means the list of minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety or operability of the Project which is required to be completed prior to Final Acceptance.

**Qualified Management Contract** means a contract that, pursuant to the applicable United States Treasury regulations, will not result in use of the Project by the manager under such contract being "private business use" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended.

**Qualifying Transportation Facility** shall have the meaning assigned to such term in Section 56-557 of the PPTA.

**Quality Assurance (QA)** means all those planned and systematic actions necessary to provide confidence that all Work fully complies with the Contract and that all materials incorporated in the Work, all equipment and all elements of the Work will perform satisfactorily for the purpose intended. Actions include design checks and reviews; document control; Shop Drawing review and approval; materials sampling and testing at the production site and the Project site; inspection of manufacturing/processing facilities and equipment; inspection of on-site equipment, calibration of test equipment, documentation of QA activities, etc.

**Quality Assurance Manager** means the individual, who may be an employee of Contractor who reports directly to the Project Manager, responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program as described in Attachment B attached to the Scope of Work.

**Quality Assurance and Control Inspection Program** means the program described in Attachment B attached to the Scope of Work.

**Quality Control (QC)** means the total of all activities performed by Contractor, designer, producer, or manufacturer to ensure that a product meets Contract requirements. For highway design, construction and maintenance this includes design procedures and checking, materials handling and construction procedures, calibration and maintenance of equipment, Shop Drawing review, document control, production process control, and any sampling, testing, and inspection done for these purposes. QC also includes documentation of QC efforts.
**Regulatory Approvals** means all local, regional, state and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under applicable Laws, Regulations and Ordinances prior to undertaking any particular activity contemplated by the Comprehensive Agreement or Design-Build Contract. The term "Regulatory Approvals" includes the EIS.

**Related Party** means:

(a) any person or entity that is a stockholder of KBR that owns, directly or through one or more intermediate entities a 10% or greater equity interest in KBR (each a "substantial owner");

(b) any entity in which a substantial owner owns directly or through one or more intermediate entities a 10% or greater equity interest; or

(c) any entity effectively controlled by a substantial owner.

**Reserved Rights** means all rights reserved to the Department under Section 15.1 of the Comprehensive Agreement.

**Responsible Public Entity** shall have the meaning assigned to such term in Section 56-557 of the PPTA and, for purposes of the Comprehensive Agreement, means Department.

**Retainage** shall have the meaning set forth in Section 14.2.6.1 of the Design-Build Contract.

**RFC Notice** shall have the meaning set forth in Section 19.4.2.1 of the Design-Build Contract.

**Right of Way Acquisition Plan** means the Right of Way Acquisition Plan for a Project Section prepared by Contractor and approved by Department in accordance with Section 6.2.1 of the Design-Build Contract and Attachment C to Appendix 6 of the Design-Build Contract, including the modifications to Department's Right of Way Manual of Instructions included in Appendix 11 to the Design-Build Contract.

**Right of Way Plans** means the Project Right of Way plans for a Project Section prepared by Contractor in accordance with Attachment C to Appendix 6 the Design-Build Contract and approved by Department in accordance with Section 6.2 of the Design-Build Contract.

**Safety Program** means Contractor’s approved safety program meeting the requirements set forth in Section 5.1.2 of the Design-Build Contract.
Scope of Work means the scope of work for construction of the Project attached to the Design-Build Contract as Appendix 6. (The Scope of Work does not include the Initial Engineering Scope of Work, which is attached to the Design-Build Contract as Appendix 2.)

Section when followed by the capital letter A, B, C or D or “Project Section” means a section of the Coalfields Expressway as described in the Scope of Work attached as Appendix 6 to the Design-Build Contract.

Section Completion Work means all Work other than Initial Engineering Work.

Section Completion Work Price, with respect to any Project Section, has the meaning set forth in the related Section Supplement.

Shop Drawings means drawings showing the sizes, shapes and locations of component elements comprising the Project.

Site means those areas designated in writing by Department for performance of the Work and such additional areas as may, from time to time, be designated in writing by Department for Contractor’s use in performance of the Work. The Site initially includes the area within the Project Right of Way limits. For purposes of insurance, indemnification, safety and security requirements and payment for use of equipment the term “Site” also includes any areas on which Utility Relocation Work is performed and any property being temporarily used by Contractor for storage of equipment and/or construction Work.

Standard Specifications means the Virginia Department of Transportation Road and Bridge Specifications dated January 1994, provided that the document attached to the Design-Build Contract as Appendix 9 shall be substituted for Division I thereof.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.1, Chapter 1, Sections 25, 48 and 67, Code of Virginia.

State Indemnitee means and includes Department, the Commissioner, the CTB, the State and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them.

Subcontract means any agreement by Contractor with any other Person to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor.
**Subcontractor** means any Person with whom Contractor has entered into any Subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of Contractor (and any other Person with whom any Subcontractor has further subcontracted any part of the Work).

**Supplier** means any Person not performing work at the Site that supplies machinery, equipment, materials or systems in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing work at the Site.

**Surety** means each properly licensed surety company, insurance company or other Person approved by the State Corporation Commission to do business in the State, listed in the U.S. Treasury Department Circular 570 and with an A.M. Best and Company rating level of A- or better, Class VII or better, or as otherwise approved by Department, at its sole discretion, which has issued the Payment Bond or Performance Bond.

**Term**, for purposes of the Comprehensive Agreement, means the time period commencing on the Agreement Date and expiring on December 31, 2051, unless earlier terminated in accordance with Article XII of the Comprehensive Agreement.

**Transaction Screen Process** means a study that at a minimum, meets the requirements of ASTM Standard 1528-00.

**Utility** or **utility** means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar substances that directly or indirectly serve the public. The term “Utility” specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for roadways.

**Utility Owner** or **utility owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

**Utility Relocation** means the removal, relocation and/or protection in place (including provision of temporary services as necessary) of any and all utility facilities that have to be removed, relocated and/or protected in place in order to permit construction of the Project.

**Warranties** means the warranties made by Contractor in Article 11 of the Design-Build Contract.
Work means all of the administrative, design, engineering, permitting, real property acquisition support services, Utility Relocation, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation, reporting, record keeping and other duties and services to be furnished and provided by Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance except for those efforts which such Contract Documents specify will be performed by Persons other than a Contractor Party.

Working Drawings means drawings required to show details associated with the Contractor's means and methods or the process it intends to utilize to construct portions of the Project, but which will not be part of the permanent construction, e.g., formwork, shoring, etc.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of any Contractor Party and in any way related to the Project or Project Right of Way, including but not limited to Shop Drawings, Working Drawings, Draft Plans and Specifications, Plans and Specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, the Right of Way Plan, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all documents described in Section 6.4.2 of the Design-Build Contract), engineers' and inspectors' diaries and reports, utility relocation plans and agreements, right of way record maps and surveys, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Regulatory Approvals, Change Orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which Contractor and Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 14.2 of the Comprehensive Agreement and which is not conceived or first reduced to practice for Project Purposes, such as but not limited to the escrowed pricing documents and other proprietary financial and pricing information of Contractor.
DRAW REQUEST AND CERTIFICATE

DRAW REQUEST NO.:_________
CERTIFICATE NO.:____________
DATE:_____________________

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Project Manager, Coalfields Expressway

Ladies and Gentlemen:

Kellogg Brown & Root, Inc. ("KBR"), submits this Draw Request and Certificate (the "Request") pursuant to Section 14.2.2 of the Design-Build Contract dated as __________ (the "Design-Build Contract") by and between KBR and the Virginia Department of Transportation ("Department"). All capitalized terms used in this Request and not defined herein have the respective meanings given to such terms in Appendix 1 to the Design-Build Contract or otherwise given in the Design-Build Contract. Section numbers shown in this Request are the Section numbers of the Design-Build Contract unless expressly stated otherwise.

The undersigned officer of KBR has discussed all matters pertinent to this Request with appropriate officers, agents and employees of KBR and its subcontractors, and other parties to ensure the accuracy of this Request, and has made such other examinations and investigations as are necessary for purposes of ascertaining the truth of the statements contained in this Request.

On the basis of the foregoing, the undersigned hereby (1) requests the Department to issue and validate checks or other orders in the amounts shown on Attachment 1 hereto to the Persons indicated therein and to mail, wire transfer or otherwise deliver each such order to such Persons in accordance with the instructions set forth in Attachment 1, and (2) certifies, warrants and represents on behalf of KBR as follows:
A. Amount of Request.

<table>
<thead>
<tr>
<th>Line</th>
<th>Item</th>
<th>Reference</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Amount for Work performed since last Request:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>For Initial Engineering Work</td>
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<td>2</td>
<td>From Fixed Price Amount For Section __ Completion Work (net of previously invoiced, lost material)</td>
<td>14.1.1; 14.2.8.7.4</td>
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<tr>
<td>3</td>
<td>From ROW Allowance</td>
<td>14.1.2.2</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>From Environmental Mitigation Allowance</td>
<td>14.1.2.3</td>
<td></td>
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<tr>
<td>5</td>
<td>From Hazardous Substances Allowance</td>
<td>14.1.2.4</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>For Change Orders for Differing Site Conditions</td>
<td>19.4.1.2(e)</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>For Change Orders due to Force Majeure Events</td>
<td>19.4.1.2(d)</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>For Change Orders due to Department-Caused Delays</td>
<td>19.4.1.2(c)</td>
<td></td>
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<tr>
<td>9</td>
<td>For Directed Changes</td>
<td>19.4.1.2(a), (b)</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Total amount of Work performed since last Request:</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>11</td>
<td>Adjustments and deductions:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Retainage</td>
<td>14.2.6.1</td>
<td>(      )</td>
</tr>
<tr>
<td>13</td>
<td>Liquidated Damages claimed by Department</td>
<td>14.4; 25.6.1.1</td>
<td>(      )</td>
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<tr>
<td>14</td>
<td>Department costs</td>
<td>11.1.3; 14.2.8.7.4, 25.2.4</td>
<td>(      )</td>
</tr>
<tr>
<td>15</td>
<td>Net amount of Request</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

B. Draw from ARC Funds. The portion of the net amount of this Request representing costs eligible and to be drawn for payment from ARC Funds in accordance with [the Initial Engineering Plan of Finance][the Section __ Plan of Finance] is $______________.

C. Payment and Payees.

1. The Costs of the Project to be paid pursuant to this Request, broken down by payee and the amount for each such payee, together with instructions regarding the method of payment and all appropriate information relating thereto, are as set forth in Attachment 1 to this Request. True and complete copies of the requisition and/or invoice of each such payee are attached hereto as part of Attachment 2 to this Request.

2. All Costs of the Project itemized in Attachments 1 and 2 are now due and payable or are due and payable within 30 days of the date of this Request; and no prior Request or draw has been made or applied to pay such Costs of the Project.

3. The Work for which payment is requested under this Request has been performed and delivered; and the payments to KBR and its Subcontractors requested in this Request include only those costs and charges for which KBR is entitled to payment at this time under the terms and conditions of the Design-Build Contract.
4. The aggregate amount of all previous draws, if any, paid to KBR or its Subcontractors have been applied only to the payment of Costs of the Project heretofore incurred as specified in the Design-Build Contract.

5. The amount of this draw together with the aggregate amount of all previous draws does not exceed the Maximum Payment Curve.

D. Certain Calculations.

1. Differing Site Conditions. The amount requested for Differing Site Conditions has been calculated in accordance with Section 19.4.1.2(e).

2. Retainage. The amount of Retainage set forth in item A, line 12 above has been calculated in accordance with Section 14.2.6.1.

3. Liquidated Damages. The amount of Liquidated Damages set forth in item A, line 13 above has been calculated in accordance with Sections 25.6.1.1.

E. Percentage Completion.

1. The cumulative amount of all prior Requests and this Request drawing against the Fixed Price Amount portion of the Contract Price is $__________________, representing ________ percent (___%) of the total Fixed Price Amount portion of the Section Completion Work Price.

2. The foregoing percentage of the Fixed Price Amount portion of the Section Completion Work Price requisitioned in all prior Requests and this Request does not exceed the percentage of the Work completed.

F. Financing Balance.

1. To the best knowledge of KBR, as of the end of the month for which this Request is submitted (check appropriate box):

☐ the amounts available¹ under the [Initial Engineering Plan of Finance][Section __ Plan of Finance] is sufficient to pay the Total Remaining Costs of [Initial Engineering Work][Section __ Completion Work].

☐ the Total Remaining Costs of [Initial Engineering Work][Section __ Completion Work exceed the amounts available² under the [Initial Engineering Plan of Finance][Section __ Plan of Finance] by $____________.

2. To the best knowledge of KBR, the Total Remaining Costs of [Initial Engineering Work][Section __ Completion Work] and the sufficiency or insufficiency of funds to pay the same are as follows:

________________________

¹ Exclusive of proceeds of bonds that have not been issued.
² Exclusive of proceeds of bonds that have not been issued.
<table>
<thead>
<tr>
<th>Line</th>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Amount of draw under this Request:</td>
<td>$ --</td>
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<tr>
<td>2</td>
<td>Remaining Costs of the Project</td>
<td>$ --</td>
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<tr>
<td>3</td>
<td>Costs of remaining Initial Engineering Work</td>
<td></td>
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<tr>
<td>4</td>
<td>Cost of remaining Section Completion Work payable from Fixed Price Amount</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unpaid Retainage</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Cost of remaining Project Right of Way Work</td>
<td></td>
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<tr>
<td>7</td>
<td>Cost of remaining Environmental Mitigation Work</td>
<td></td>
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<td>8</td>
<td>Cost of remaining Hazardous Materials Work</td>
<td></td>
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<tr>
<td>9</td>
<td>Cost of remaining Work under pending, approved and disputed Change Orders, Requests for Changes and RFC Notices</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Total (sum of lines 2 through 9)</td>
<td>$</td>
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<tr>
<td>11</td>
<td>Total Remaining Costs of the Project (sum of Lines 1 and 10)</td>
<td>$</td>
</tr>
<tr>
<td>12</td>
<td>Sufficiency (Insufficiency) (Available Funds minus line 11)</td>
<td>$</td>
</tr>
</tbody>
</table>
G. Status of Project Budget

The status of the Project budget under the Design-Build Contract is as follows:

<table>
<thead>
<tr>
<th>PROJECT BUDGET CATEGORY</th>
<th>INITIAL AMOUNT</th>
<th>AMOUNT OF THIS REQUEST</th>
<th>TOTAL REQUESTS TO DATE</th>
<th>AMOUNT REMAINING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Engineering Price</td>
<td></td>
<td></td>
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<tr>
<td>Fixed Price Amount</td>
<td></td>
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<tr>
<td>ROW Allowance</td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Environmental Mitigation Allowance</td>
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<tr>
<td>Hazardous Materials Allowance</td>
<td></td>
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<tr>
<td>Contingency for Department-Retained Risks</td>
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<tr>
<td>Total</td>
<td></td>
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</tr>
</tbody>
</table>

H. Status of Contract and Contract Performance

1. The expected date of [Final Acceptance][Substantial Completion] of the Project is ______________, which is (check appropriate boxes):

   not later than the Guaranteed Completion Date
   _______ days after the Guaranteed Completion Date.

2. The Project is being built in accordance with the Scope of Work and the Contract Documents, and in compliance with all Laws, Regulations and Ordinances in effect at the time of performance of the relevant Work.

3. All Regulatory Approvals required for the construction of the Project and opening of the Project for normal use and operations either:

   a. have been obtained and remain in full force and effect and are not subject to any appeals or further proceedings or to any unsatisfied conditions that may allow material modification or revocation; or

   b. with respect to Regulatory Approvals required for construction or opening for normal use and operations and not yet obtained, such Regulatory Approvals could not be reasonably obtained before the date hereof and KBR has no reason to believe that such Regulatory Approvals will not be granted in due course prior to the date that such Regulatory Approvals are required in connection with the construction of the Project or opening of the Project for normal use and operations.

3 Include amount of any deposits for condemnation made directly by Department.
5. KBR has obtained all Subcontractor’s and manufacturer’s representations, warranties, guaranties and obligations required to be obtained by KBR under Section 11.3 with respect to all Work performed and materials and equipment procured to date under the Design-Build Contract.

6. All insurance policies and coverages required under Article 22 of the Design-Build Contract are in full force and effect.

7. No Event of Default under the Design-Build Contract, no KBR Default under the Comprehensive Agreement, and no default by KBR or Halliburton Company under any other Project Agreement exists on the date of this Request or shall occur as a result of the making of the draw to which this Request relates.

8. All representations and warranties of KBR or Halliburton Company contained in the Design-Build Contract, the Comprehensive Agreement or any of the other Project Agreements in effect on the date hereof are true and correct in all material respects on and as of the date hereof (except for such representations or warranties that by their terms relate solely to a specific prior date) with the same effect as if made on and as of the date hereof.

9. The Design-Build Contract and each of the other Project Agreements executed on or prior to the date hereof and to which KBR or Halliburton Company is a party is in full force and effect as of the date hereof (or, in the case of the first Request, will be in effect on the date of the draw thereunder), each without amendment or modification except in accordance with the terms thereof and of the Design-Build Contract.

10. All amounts drawn hereunder are for Costs of the Project.

I. Documentation and Conditions of Request.

1. This Request is accompanied by all documents as are required to be delivered by KBR pursuant to Sections 14.2.2 (and not previously delivered).

2. The information in all documents and supporting papers prepared by KBR, and, to the best knowledge of the KBR, its subcontractors, and submitted to the Department in connection with this Request is true, correct and complete.
J. Authority; Continuation of Certifications.

1. The undersigned has the authority to deliver this Request on behalf of KBR.

2. The Department may assume that the matters certified herein remain true from and after the date hereof through the date of the draw to which this Request relates unless the undersigned shall have delivered to Department a certificate as to any change in any of such matters, which the undersigned hereby agrees to give promptly after obtaining knowledge thereof.
IN WITNESS WHEREOF, the undersigned has caused this Request to be executed by its duly authorized officer on the date first above written.

KELLOGG BROWN & ROOT, INC.

By: ________________________________
   Name: ______________________________
   Title: ______________________________

APPROVED FOR PAYMENT IN ACCORDANCE
WITH PAYMENT INSTRUCTIONS HEREIN:

Name: ______________________________
Title: Authorized Department Representative
**ATTACHMENT 1 TO DRAW REQUEST AND CERTIFICATE**

### Payment Instructions

<table>
<thead>
<tr>
<th>NAME AND ADDRESS OF PAYEE</th>
<th>PAYMENT INSTRUCTIONS</th>
<th>AMOUNT (less Retainage, Adjustments and Deductions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kellogg Brown &amp; Root, Inc. [insert address]</td>
<td>[e.g. Wire to: ___________]</td>
<td>$___________</td>
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<tr>
<td>[Others, e.g. escrow holders for ROW acquisitions; court clerks for ROW condemnations:]</td>
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<tr>
<td>Total Invoice</td>
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<td>$___________</td>
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</tbody>
</table>
ATTACHMENT 2 TO DRAW REQUEST AND CERTIFICATE

Invoices for Costs of the Project for the Coalfields Expressway

Attach, among other things, the following:

- KBR invoices in accordance with, and which describe status of completion as it relates to, CPM/Payment Schedule;

- KBR and Subcontractor certificates of receipt of all prior progress payments due (except for Retainage and disputed amounts);

- For Requests that include amounts payable on time and materials basis, all supporting documentation required under Section 19.7;

- For Requests that include amounts payable on unit price basis, invoices, receipts or other evidence establishing number of units delivered.
DRAW REQUEST AND CERTIFICATE

DRAW REQUEST NO.: __________
CERTIFICATE NO.: __________
DATE: ________________

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Project Manager, Coalfields Expressway

Ladies and Gentlemen:

KELLOGG BROWN & ROOT, submits this Draw Request and Certificate (the Request) pursuant to Section 14.2.2 of the Design-Build Contract dated as of January 11, 2002 (the “Design-Build Contract”) by and between KELLOGG BROWN & ROOT and the Virginia Department of Transportation (Department). All capitalized terms used in this Request and not defined herein have the respective meaning to such terms in Appendix 1 of the Design-Build Contract or otherwise given in the Design-Build Contract. Section numbers shown in this Request are the Section numbers of the Design-Build Contract unless expressly stated otherwise.

The undersigned manager of KELLOGG BROWN & ROOT has discussed all matters pertinent to this Request with appropriate managers, agents and employees of KELLOGG BROWN & ROOT and its Subcontractors, and other parties to ensure the accuracy of this Request, and has made such other examinations and investigations as are necessary for purposes of ascertaining the truth of the statements contained in this Request.

On the basis of the foregoing, the undersigned hereby (1) requests payment in the amounts on Attachment 1 hereto as set forth in Article 14 of the Design-Build Contract and (2) certifies, warrants and represents on behalf of KELLOGG BROWN & ROOT as follows:

A. Amount of Request

See Attachment 1 for the Request amount and the supporting documentation.

B. Payment and Payees

1. Amount due on the Project itemized in Attachment 1 are now due and payable or are due and payable not more than 30 Days after the Date
of this Request in accordance with Article 14 of the Design-Build Contract.

2. The Work for which payment is requested under this Request has been performed and delivered; and the payments to KELLOGG BROWN & ROOT and its Subcontractors requested in this Request include only the values and charges for which KELLOGG BROWN & ROOT is entitled to payment at this time under the terms and conditions of the Design-Build Contract.

3. The aggregate amount of all previous draws, if any, paid to KELLOGG BROWN & ROOT or its Subcontractors have been applied only to the payment of the value of the Project heretofore incurred as specified in the Design-Build Contract.

C. Status of Contract and Contract Performance

1. The Project is being built in accordance with the Scope of Work and the Contract Documents, and in compliance with all Laws, Regulations and Ordinances in effect at the time of performance of the relevant Work.

2. KELLOGG BROWN & ROOT has obtained all Subcontractor’s and manufacturer’s representations, warranties, guaranties and obligations required to be obtained by KELLOGG BROWN & ROOT under Article 11 of the Design-Build Contract with respect to all Work performed and materials procured to date under the Design-Build Contract.

3. All insurance policies and coverages required under Article 22 of the Design-Build Contract are in full force and effect.

4. No event of Default under the Design-Build Contract and no KELLOGG BROWN & ROOT Default under the Comprehensive Agreement exists on the date of this request or shall occur as a result of the making of the draw to which this Request relates.

5. All representations and warranties of KELLOGG BROWN & ROOT contained in the Design-Build Contract or Comprehensive Agreement in effect on the date hereof are true and correct in all material respects on and as of the date hereof (except for such representations or warranties that by their terms relate solely to a specific prior date) with the same effect as if made on and as of the date hereof.

6. The Design-Build Contract and Comprehensive Agreement executed on or prior to the date hereof and to which KELLOGG BROWN &
ROOT is a party is in full force and effect as of the date hereof (or, in the case of the first Request, will be in effect on the date of the draw thereunder), each without amendment or modification except in accordance with the terms thereof and of the Design-Build Contract.

D. Documentation and Conditions of Request

1. This Request is accompanied by all documents required to be delivered by KELLOGG BROWN & ROOT pursuant to Article 14 of the Design-Built Contract.

2. The information in all documents and supporting papers prepared by KELLOGG BROWN & ROOT, and, to the best knowledge of KELLOGG BROWN & ROOT, its Subcontractors, and submitted to the Department in connection with this Request is true, correct and complete.

E. Authority; Continuation of Certifications

1. The undersigned has the authority to deliver this Request on behalf of KELLOGG BROWN & ROOT.

2. The Department may assume that the matters certified herein remain true from and after the date hereof through the date of the draw to which this Request relates unless the undersigned shall have delivered to Department a certificate as to any change in any of such matters, which the undersigned hereby agrees to give promptly after obtaining knowledge thereof.
IN WITNESS WHEREOF, the undersigned has caused this Request to be executed by its duly authorized officer on the date first written.

KELLOGG BROWN & ROOT

By: ________________________________

Name: ______________________________

Title: ______________________________

Verified and Recommend by Department on Site Representative:

____________________________________

Name: ______________________________

Title: ______________________________

APPROVED FOR PAYMENT IN ACCORDANCE WITH PAYMENT INSTRUCTIONS HEREIN:

____________________________________

Name: ______________________________

Title: Chief Engineer
### Attachment 1

<table>
<thead>
<tr>
<th>CPM Activity</th>
<th>Value of Activity</th>
<th>Percent Complete this Period</th>
<th>Percent Complete to Date</th>
<th>Amount of Request this Period</th>
<th>Total Amount to Date</th>
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</table>

The total for this Request is $________________________
COALFIELDS EXPRESSWAY

PROJECT SCOPE

Introduction

The purpose of this document is to describe the scope of work and applicable standards to be provided by Kellogg Brown & Root, Inc. in the design and construction of Coalfields Expressway as proposed under the authority of the Virginia Public-Private Transportation Act of 1995. The Project shall begin near the town of Pound at the intersection with Route 23, generally east to the end of the project at the Virginia/West Virginia State Line.

Standards

Work required under this Contract shall be performed in accordance with the criteria contained in the following documents, which are incorporated by reference to this Project Scope.

Appalachian Regional Commission Code
AASHTO Guide for Design of Pavement Structures (Rigid Pavement and Flexible Pavement)
AASHTO Guide Specifications for Strength Design of Truss Bridges (Load Factor Design), 1986 Edition
Americans with Disabilities Act Accessibility Guidelines for State and Local Government Facilities
American Water Works Association Standards
FHWA Roadway Lighting Handbook, December 1978
The Illumination Engineering Society of North America, Roadway Lighting, RP-8-00
VDOT Road and Bridge Specifications, January 1994, as amended by the Special Provisions and Special Provision Copied Notes attached as Attachment D, hereto
VDOT Road and Bridge Standards, Volumes I and II, 2001 Edition
VDOT Structure and Bridge Division Manual, Volumes III and V
Project Description

The Project will be constructed in four sections as shown on the General Layout attached as Attachment A hereto, as follows:

Section A – Bull Gap to Harman Junction
Section B – Pound to Clintwood
Section C – Harman Junction to West Virginia State Line
Section D – Clintwood to Bull Gap

Typical Roadway Section for Section A through Section D

The mainline typical section for Section A through Section D will feature two 12 feet wide travel lanes in each direction, separated by 5 feet paved inside shoulders and a concrete median barrier. The typical outside shoulder will be 14 feet wide in cut sections and fill sections where guardrail is not required, of which 12 feet shall be paved, and 17 feet wide in fill sections where guardrail is required, of which 12 feet shall be paved. In cut sections, a 16 feet wide foreslope will lead to a V-ditch with a 10-feet wide backslope. The connector road typical section will feature one 12 feet wide travel lane in each direction. The typical outside shoulder will be 4 feet wide in cut sections and fill sections where guardrail is not required, and 7 feet wide in fill sections where guardrail is required. In cut sections, a 8 feet wide foreslope will lead to a V-ditch with an 8 feet wide backslope.

Section A – Bull Gap to Harman Junction

Design and construction of a four lane section of the Coalfields Expressway beginning at new location near Bull Gap 0.6 miles southeast of Route 609 and ending near Harman Junction 1.0 mile west of the intersection of U.S Route 460 and Route 656. The total length of this section is approximately 4.9 miles. Design and construction of a two-lane connector at the beginning of Section A to Route 609 at Bull Gap (1.0 mi.) and a two-lane connector at the end of Section A to Route 460 (1.0 mi.).

Route 609

- Construct one bridge carrying Coalfields Expressway over Route 609 and Jess Branch
- Construct one bridge carrying Coalfields Expressway over Route 609, Bull Creek and Norfolk Southern Railway
Route 601

- Construct one bridge carrying Coalfields Expressway over Route 601 and unnamed tributary to Deel Fork

Route 604

- Construct one bridge carrying Coalfields Expressway over Route 604 and Poplar Creek

Levisa Fork and Norfolk Southern Railway

- Construct a bridge carrying connection road over the Levisa Fork and Norfolk Southern Railway

Section B – Pound to Clintwood

Design and construction of a four lane section of the Coalfields Expressway beginning at the intersection with U.S. Route 23 located 0.24 miles north of Route 23 Business north of Pound and ending at the intersection with Route 707 east of Clintwood near the Dickenson County Technology Park. The total length of this section is approximately 11.5 miles. Design and construction of two-lane connectors from the Coalfields Expressway to Route 631 in Wise County (0.4 mi.), from the Coalfields Expressway along Route 1025 and north to Route 83 (0.2 mi.), from the Coalfields Expressway to Route 72 southwest of Clintwood (0.3 mi.), and from the Coalfields Expressway to Route 621 and Georges Fork

Route 72

- Construct one bridge carrying Coalfields Expressway over Route 72 and Laurel Branch

Route 83

- Construct one bridge carrying Coalfields Expressway over Route 83 at Long Branch

Section C – Harman Junction to West Virginia State Line

Design and construct a four lane section of the Coalfields Expressway beginning at the endpoint of Section A and ending at the West Virginia State Line near Paynesville, West Virginia. The total length of this section is approximately 16.5 miles. Design and construction of two-lane connectors from the Coalfields Expressway to existing Route 656 along Looney Creek (0.5 mi.) and from the Coalfields Expressway to existing Route 643 (0.7 mi.).

U. S. Route 460

- Construct one bridge carrying Coalfields Expressway over U.S. Route 460, Levisa Fork, and Norfolk Southern Railway

Route 656
• Construct one bridge carrying Coalfields Expressway over Route 656 and Looney Creek

New Wolfpen Branch

• Construct one bridge carrying Coalfields Expressway over New Wolfpen Branch

Route 677

• Construct one bridge carrying Coalfields Expressway over Route 677 and Old Wolfpen Branch

Route 642

• Construct one bridge carrying Route 642 over Coalfields Expressway, including approximately 0.3 miles of roadway detour and approach work along Route 642

Unnamed Tributary to Charles Fork

• Construct one bridge carrying Coalfields Expressway over unnamed tributary to Charles Fork

Route 643

• Construct one bridge carrying Coalfields Expressway over Route 643

Big Butt Branch

• Construct one bridge carrying Coalfields Expressway over Big Butt Branch

Dry Tripe Branch

• Construct one bridge carrying Coalfields Expressway over Dry Tripe Branch

Section D – Clintwood to Bull Gap

Design and construction of a four lane section of the Coalfields Expressway beginning at the end at Section B at Route 707 east of Clintwood and ending at the beginning of Section A. The total length of this section is approximately 16.8 miles. Design and construction of two-lane connectors from the Coalfields Expressway to existing Route 637 (0.2 mi.), from Coalfields Expressway to existing Route 2022 (0.2 mi.), from Coalfield Expressway to existing US 63 at Tarpon (0.5 mi.), from Coalfields Expressway to existing US 63 at Splashdam (0.9 mi.), and to existing US 80 from Coalfields Expressway to Haysi (0.3 mi.).

Holly Creek

• Construct one bridge carrying Coalfields Expressway over Holly Creek

Cranes Nest River
• Construct one bridge carrying Coalfields Expressway over Cranes Nest River

**Unnamed Tributary to Honeycamp Branch**

• Construct one bridge carrying Coalfields Expressway over unnamed tributary to Honeycamp Branch

**Route 607**

• Construct one bridge carrying Route 607 over Coalfields Expressway, including approximately 0.2 miles of roadway detour and approach work along Route 607

**Private Road**

• Construct one bridge to carry private road over Coalfields Expressway (Near Tarpon), including approximately 0.2 miles of roadway detour and approach work along Private Road

**Presley Branch**

• Construct one bridge carrying Coalfields Expressway over Presley Branch

**Route 63**

• Construct one bridge carrying Route 63 over Coalfields Expressway (near Splashdam), including approximately 0.3 miles of roadway detour and approach work along Route 63

**Russell Fork**

• Construct one bridge carrying Coalfields Expressway over Russell Fork, Route 613 and CSX Transportation Railroad

**VA Byway Route 611**

• Construct one bridge carrying Coalfields Expressway over VA Byway Route 611

**Route 80**

• Construct one bridge carrying Coalfields Expressway over Route 80 and Sugar Branch

**Bart’s Lick**

Construct one bridge carrying Coalfields Expressway over Bart’s Lick

**Grade Separation / Stream Crossing Structures – Coalfields Expressway**

The dimensions shown herein are approximate and are subject to final design which is the
responsibility of the Contractor in accordance with the Contract Documents.

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>Bu</th>
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<tbody>
<tr>
<td>Buchanan A Over Route 609 &amp; Jess Branch 1052’ 83’ 240’</td>
<td>Buchanan A Over Route 609 &amp; Bull Creek &amp; NS Railway 1085’ 83’ 260’</td>
</tr>
</tbody>
</table>

**Environmental Regulations and Permits**

The Contractor shall obtain all Regulatory Approvals for the Project in accordance with Section 10.2 of the Design-Build Contract.

**Project Wide Clearances:**

In general the Contractor shall provide the compensatory mitigation required to obtain the necessary Regulatory Approvals in accordance with the Contract Documents. Hazardous Material identified on any property is addressed in Section 6.5 of the Design-Build Agreement.

Contractor will be responsible for obtaining all necessary VPDES permits and maintaining all necessary documentation for the construction of this project. This includes Pollution Prevention Plans, weekly inspections of erosion and sediment controls, and post storm inspections.

The Contractor shall be responsible for conducting all necessary local, state, and FEMA floodplain studies for the completion of all sections of this Project.

The Project shall be built under the requirements of the U. S. Army Corps of Engineers (Corps)
permits authorized under Section 401/404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, Virginia Water Protection Permit from Department of Environmental Quality and a Virginia Pollutant Discharge Elimination System Permit for Construction, and the Subaqueous Bed Permit from Virginia Marine Resources Commission.

The Permit Applications shall delineate all of the wetlands and other waters of the U. S. (WOUS) temporarily, adversely, or permanently impacted by construction of the Project, and provide appropriate mitigation as defined herein. Alternatives for providing mitigation sites by the Contractor include the following:

(1) Contractor may provide mitigation sites where the Contractor requests and obtains acceptance of the mitigation site grading for wetlands and streams by the Corps and the DEQ. The Work shall include preparation of surveys, engineering, landscape plans and a water budget. The Contractor will monitor the wetland mitigation site(s) for the duration required by the permits. Upon the successful completion of the post construction monitoring of the mitigation site(s) by the Contractor and acceptance by the Corps and the DEQ, the mitigation site and the project permit(s) will be transferred to the Commonwealth.

(2) Contractor may provide mitigation in approved wetland banks at the Contractor's cost.

(3) Contractor may pay required fees to the Corps of Engineers for mitigation credits.

Contractor will be responsible for preparing and coordinating any changes to the NEPA document with the appropriate agencies, and developing a plan to ensure environmental commitments are implemented, including all associated cost. All FEIS and ROD commitments must be compiled with during the development of the project. If the project is modified, or any commitment is not carried out as defined in the FEIS or ROD, the Contractor shall modify the design.

**Railroad Coordination**

The Contractor will be responsible for coordinating with the railroad companies affected by the project. This responsibility will include preparation of Exhibits and various technical documents to secure approval by the railroad companies as well as answering any technical questions during the design and construction process. VDOT will assist the Contractor.

**Maintenance-of-Traffic**

Maintenance-of-traffic shall conform to the approved Construction Traffic Management Plan as required by the Design-Build Contract, Article 9 and approved by the Chief Engineer or his designated representative. Variances to the plan shall be requested at least one week prior to the need for approval by the Chief Engineer or his designated representative. No temporary lane restrictions shall take place between 12:00 noon on the Friday preceding and 12:00 noon the Tuesday following Memorial Day and Labor Day; or July 4 and Christmas Day if these holidays occur on Saturday or Sunday. No lane restrictions shall take place between 12:00 noon Wednesday preceding and 12:00 noon the Monday following Thanksgiving Day. All activities related to the Project that have an impact on the traveling public shall be performed in accordance with the Construction Traffic Management Plan to be developed by Contractor. Contractor shall provide temporary signage used during the construction of the Project that conforms to the Manual of Uniform Traffic Control Devices.
Coordination with other VDOT construction efforts in the area shall be coordinated through the Bristol District. The Coalfields Expressway shall have preference for lane closures required for the Project over separate contractors for concurrent construction projects in the Project area, unless determined by the Department to be an issue of life, limb, or injury.

Before the start of construction of any section, the Construction Traffic Management Plan for that section shall be developed by Contractor, which shall include an operational traffic analysis and proposed mitigation measures on the Project during the course of construction and their interface with the connecting and adjacent public transportation facilities and State Highways.

The Construction Traffic Management Plan shall set forth standards and procedures for designating each Construction Segment and shall initially identify each Construction Segment. Contractor may from time to time change the designation of Construction Segments provided the change conforms to such standards and procedures and Department has approved the change in writing. Department shall not unreasonably withhold or delay its approval. Each such change shall become effective when Department and Contractor execute a written amendment or supplement to the Construction Traffic Management Plan setting forth such change.

Pavement

The pavement sections to be provided for the Coalfields Expressway are as listed below:

**Mainline**

- Asphalt Surface Course – 1 ½” SM 12.5
- Asphalt Intermediate Course – 2” IM 19.0A
- Asphalt Base Course – 6” BM 25.0
- Aggregate Base Course – 8” 21B
- Aggregate Base Course – 12” #1 Stone

**Connection Pavement Section**

- Asphalt Surface Course – 1 ½” SM 12.5
- Asphalt Base Course – 4” BM 25.0
- Aggregate Base Course – 6” 21B

**Mainline Shoulder Pavement Section**

- Asphalt Intermediate Course – 2” IM 19.0A
- Asphalt Base Course – 4” BM 25.0
- Aggregate Base Course – Depth varies, 11 ½” max. 21B
- Aggregate Base Course – 12” #1 Stone (daylight to roadside ditch)

**Signage**

Permanent Signs shall be a part of the Work under the Design-Build Contract to be furnished by the Contractor and shall include directional and enforcement signs. The sign plans shall be approved by the Chief Engineer.
Construction Schedule

Schedule of Construction for Coalfields Expressway shall be as described in Articles 17 and 18 of the Design-Build Contract and each Section Supplement.

Quality Assurance and Control

Quality Assurance and Control Inspection Program shall be in accordance with Attachment B.

Plan Preparation and Plan Development

Plan preparation and plan development shall be in accordance with Attachment C.

Attachments:
A - General Layout showing different project Sections
B - Quality Assurance and Control Inspection Program
C - Plan Preparation and Plan Development
D - Special Provisions and Special Provision Copied Notes to the Road and Bridge Specifications
QUALITY ASSURANCE AND CONTROL INSPECTION PROGRAM

INTRODUCTION

The QA MANAGER (QAM) will be responsible for providing Quality Assurance and Control Inspection to monitor the Coalfields Expressway construction activities for conformance with the approved Drawings, Specifications and related documents.

The Virginia Department of Transportation (VDOT) may provide quality assurance inspection during the life of the project, to verify conformance with VDOT’s obligations under Design-Build Contract. The Corps of Engineers (COE), county and the various utility companies affected by Coalfields Expressway may also occasionally provide spot inspection to review construction compliance with their respective contractual or legal requirements.

Subject to the Design-Build Contract, VDOT Standards and Specifications, including any project supplemental specifications specifically identified in The Contract Documents between VDOT and Kellogg Brown & Root (KBR) shall at all times govern the construction of this project. The QAM, in conjunction with the Engineer, shall be the interpreter of these requirements unless otherwise directed by VDOT. The QAM, in conjunction with the Engineer of Record, shall certify that all construction has been placed in accordance with the approved plans and specifications.

To protect the interest of VDOT as specified in the Design-Build Contract, a Quality Assurance and Control Inspection Program (QA/CIP) will be implemented to address and define inspection and reporting responsibilities. This Program is defined on the following pages and reflects the unique relationships among the parties involved in this Project.

ORGANIZATION AND RESPONSIBILITIES

The QAM will be responsible for monitoring the construction activities for Contractor compliance to the QA/CIP and to provide the necessary documentation and coordination of all construction, inspection and on site testing of construction materials and construction. The QAM or his representative will be responsible for submission of a Source of Materials Letter (C-25) to the Department for assignment of inspection and testing to be accomplished off site. Actual QA/CIP manpower requirements will be determined by the QAM based upon the levels of construction activities undertaken by the Contractor and to adequately and properly monitor the work to be certified as required by the Design-Build Contract and the Project’s approved schedule.
The QAM will have overall responsibility to coordinate the utilization of any and all Independent Materials Testing Agencies’ Inspectors for on site testing and inspection. The QAM will coordinate with KBR’s Project Manager (PM) as to the Project’s schedule and the inspection staff required to adequately and properly monitor these activities for certification of compliance to VDOT.

The QAM will inform the PM and VDOT’s District Construction Engineer (or his designated representative) when the quality of KBR’s production forces (PRODUCTION) work is unsatisfactory. The QAM will notify KBR if corrective measures are not implemented in a timely manner. KBR’s PM will make all decisions regarding removal of defective work or reduction of payment. The QAM shall keep VDOT’s District Construction Engineer (or his designated representative) informed of all such actions.

The VDOT Quality Assurance inspectors will be afforded the opportunity to perform any inspection activities including but not limited to those listed below:

- Review locations where pipe and culvert are to be installed - temporary or permanent
- Inspect pipe and culvert foundations before bedding material is placed
- Review pipe and culvert invert elevations
- Inspect bridge foundations prior to placement of concrete
- Review rebar and form work prior to concrete placement
- Monitor bridge deck and bridge substructure concrete placement
- Review significant plan changes
- Attend scheduling meetings
- Have access to all Project inspection documentation
- Review failed material tests with KBR and the QAM
- Coordinate all discrepancies with KBR PM and the QAM
- Provide overview inspection of off-site asphalt and concrete plants furnishing VDOT approved materials
- Monitor traffic control devices and traffic safety

The QAM will use Independent Materials Testing Agencies that will furnish technicians, equipment and facilities to perform on site tests of fabricated and non-fabricated materials used in the construction of this Project. The QAM will be responsible for coordinating the proper inspection coverage and documentation of materials certifications. Independent Materials Testing Agencies’ staff shall be VDOT certified in the areas that they will be involved. Troxler certification may be an acceptable alternative for nuclear density inspection of compacted soils and asphaltic concrete.
The QAM will maintain daily logs of all construction activities and will perform, although not limited to, the following to observe and record the conformance with plans and specifications:

- Review material test results
- Coordinate inspection of bearing material for foundations with the geotechnical firm selected by KBR.
- Check form work and reinforcing bar placement for concrete structures.
- Monitor structural steel placement
- Monitor concrete curing procedures
- Inspect bridge deck screed machines, including operation and depth of slab settings
- Monitor deck and substructure concrete placement
- Review maintenance and protection of installed traffic control devices

This list is not intended to be inclusive of all activities that may be required of the QA Manager. The QAM will also perform the following tasks, monitor and review the testing activities of all Independent Materials Testing Agencies to assure conformance with the contract documents.

- Compaction testing of engineered fills including embankment, backfills, and pipe trenches
- On-site concrete testing consisting of slump, air entrainment, temperature, and the making of concrete test cylinders.
- Compaction testing of base courses and asphalt pavement
- Continuous inspection of utility installations within the Coalfields Expressway Right-of-Way
- Blow count recordation for driving of piles
- Witness pressure and leak tests
- Field bolt torque inspection
- Check structural steel field-coat paint thickness

Off site testing of aggregates, asphalt, concrete, structural steel, prestressed concrete, precast concrete, metal pipe, polyethylene pipe, paint, glass beads, reflective materials, curing compounds, epoxies, etc., will be tested and monitored by the Department in accordance with existing test programs. Materials that do not show evidence of test on delivery to the project shall be sampled and submitted to the Department for testing.
The QAM will coordinate and receive all test results and reports from the Department or Department furnished inspectors for the following services from the off-site laboratories and plant inspectors:

- Laboratory testing of concrete cylinders
- Shop inspection of fabricated structural steel
- Monitoring of concrete, asphalt and crusher plants
- Certifications from F.O.B. job site provided materials

The QAM will maintain a complete set of test reports, source of materials letters, certifications, and other evidence of test completed on site. The storage site shall be secure from fire and theft. The records are to be maintained for a minimum of 5 years from the date of final payment.

**INSPECTION AND ADMINISTRATION**

1. **INSPECTION PROGRAM**

   **A. General**

   All inspections shall either be performed by, or at the direction of the QAM. The QAM shall determine whether the materials and work are in compliance with the approved drawings, specifications, and applicable VDOT standards as outlined in the Design-Build Contract.

   **B. Control Testing**

   All on site control testing will be performed by an approved Independent Materials Testing Agency. Inspection activity will be scheduled and coordinated by the QAM.

   The QAM shall:

   1. Provide scheduling and coordination of all testing and re-testing to maintain the level of testing for VDOT approval and certifications.
   2. Receive and check material certifications and samples for conformance.
   3. Inspect delivered materials and equipment.
   4. Inspect work in progress and in place.
   5. Witness field testing of construction materials.
   6. Make control tests to support the methods or equipment of any independent testing agency.
   7. Verify that the results of tests conform to contract requirements.
   8. Immediately notify KBR’s PM if materials or workmanship do not comply with the specifications. A copy of the Non-Conformance report shall be forwarded to VDOT in accordance with Paragraph 2.A hereof. KBR PM and
VDOT will be notified in writing when these deficiencies are not corrected in a timely and appropriate manner.

C. Reporting

All inspection requirements will be documented in writing. Complete and accurate reports of all Quality Control Tests will be maintained by the QAM. Among the items to be shown on the report are:

1. Description of work
2. Type of test and specification reference
3. Agency and Inspector performing the test and location, time, date and equipment used.
4. Sample source and date secured
5. Results of tests
6. Recommendation as to acceptance or rejection
7. Signature of responsible person controlling the testing work
8. Approval or rejection by the QAM

D. Scheduling and Coordination

The QAM, along with necessary representatives of the Quality Assurance Team, will attend KBR conducted weekly construction job meetings with subcontractors and field superintendents to discuss safety, schedule, and outstanding issues.

E. Job Meetings

Communication is critical to this project’s success. Therefore an onsite, weekly Quality Assurance meeting will be held with KBR staff, subcontractors and VDOT. Each day the QAM shall discuss the day’s proposed activities with Production.

The QAM will attend the weekly Safety meeting along with a representative of each of the Independent Materials Testing Agencies.

QAM will disseminate meeting information to the QA/CIP Team.

F. Progress of Work

KBR will make a video Cassette Recording or take photographs showing the progress of construction. Each recording or photograph will normally show the date and time. The tapes and photographs made by KBR and/or the Subcontractor will be for their use in reviewing Project status for the administration of contract payments. As applicable, this photographic record of the progress shall accompany the monthly report to VDOT.
G. Environmental Monitoring Program

KBR shall employ a full time Environmental Inspector to ensure compliance with applicable laws and regulations, and serve as a resource in securing permits and as a source of expert advise. The duties shall include but are not limited to:

- Liaison between KBR and Production, and VDOT and regulatory agency personnel to coordinate and solve environmental, and design-engineering issues.
- Implements contract special provisions and provides on-time technical guidance on the implementation of permit conditions within each phase of the project to analyze and evaluate water quality impacts, construction design and technical data associated with the project.
- Anticipates problems and concerns the environmental regulatory agencies may raise during the construction of the project.
- Facilitates the resolution of engineering, biological, water quality, and wetland-related issues as they arise during project construction. Arranges and conducts meetings with federal and state agencies to solicit comments on project implementation.
- Develops biological, chemical and physical sampling procedures to support regulatory approvals and the Environmental Monitoring Program.
- Project coordinator and expert on the implementation of the requirements from the Erosion and Sediment Control Law, Storm water Management Law, Virginia Pollution Discharge Elimination System (VPDES) permits, Virginia Water Protection Permits, VMRC Permits and Corps of Engineers Permits.
- Has performed by qualified personnel, the scientific field investigations, data collections and wetlands delineation to assess and ensure the implementation of permit conditions during construction activities so that reporting deadlines are met.
- Provide Quality Assurance/Quality Control for the implementation of the permit conditions in accordance and in compliance with current state and federal environmental regulations.
- Prepares, and coordinates permit applications to acquire permit modifications for the project and to acquire permits for support activities.

2. ADMINISTRATIVE FUNCTIONS

Conformity with Plans and Specifications

All work performed and all materials furnished shall be in conformity with the Contract requirements.

The QAM has the authority to enforce requirements of the Contract Document, and Reference Document, when deficient materials or unsatisfactory finished products fail to conform to Contract Documents and Reference Documents. The
QAM, in accordance with his assignment, shall monitor, and inspect Production work as it progresses. Work that is not acceptable will be brought to the immediate attention of Production who will have the deficiency corrected before it is covered. All deficiencies (hereinafter referred to as a Non-Conformance), including those pertaining to rules, regulations and permit requirements, will be documented by the QAM. A Non-Conformance Report (NCR), referenced by a unique number, will be forwarded to KBR PM and VDOT within 24 hours of discovery of the Non-Conformance. NCR’s can be initiated by the QAM, VDOT, KBR and its subcontractors, and any agency issuing a permit for the prosecution of this work. In order to maintain Project continuity, all NCRs will be submitted to and coordinated by the QAM for resolution. PRODUCTION may submit through KBR to the QAM a proposed method of correction for approval. KBR will require Production to remove, replace or correct inferior materials and workmanship. Responsibility for the expense for these corrections will be resolved by KBR. Each item will be placed in a computer database so as to create an ongoing punch list. This punch list will be provided on a monthly basis to the KBR PM and VDOT. The objective is to resolve NCRs within 30 Days.

In certain cases, materials or finished products, are not in strict conformity with the Contract requirements, but the removal of these materials will cause serious schedule and possible completion impacts. In these situations, the QAM and the KBR Design Manager, with the concurrence of VDOT, will make a final determination as to whether the work can be accepted.

In the event that it is accepted, the QAM will document the basis of acceptance. KBR and VDOT will be responsible for any decisions as to an appropriate adjustment in the Contract price or other specific requirements or adjustments that are appropriate.

The QAM shall have the authority to suspend the work, wholly or in part, by written order for such period as he deems necessary because of any condition considered by them to be unfavorable for the suitable prosecution of the work; or failure on the part of Production to perform any provision of the NCR. A NCR recommending suspension of work can be initiated by any of the parties noted above but must be furnished to the QAM for coordination and concurrence within 24 hours of discovery. VDOT can instruct KBR to suspend the work.
PLAN PREPARATION AND PLAN DEVELOPMENT

PLAN PREPARATION

Drafting Standards

All drafting must be done in such a manner that when reduced to one-half of the original size the drawings will be perfectly legible and useful for construction. Lettering should be a minimum of one eighth (1/8) inch in height and full-size roadway plan sheets should be prepared at a minimum scale of 1”=50’. The roadway and structure plans shall be prepared using on standard size sheets, the size of which shall be thirty-six (36) inches by twenty-two (22) inches, with a one-half (1/2) inch border, except on the left edge where the border will be two (2-1/2) inches wide. The plans shall be prepared in ink on materials approved by VDOT. The approved sheets shall be furnished by KBR with appropriate signature and seal blocks on the title sheets indicating approval for acquisition of right of way and construction.

Electronic Files

Plans shall also be submitted in electronic format using Microstation CADD software. VDOT will furnish electronic files of all applicable standard detail sheets upon request by KBR. Standard detail sheets are available in electronic format using CADD Microstation. The files will use standard VDOT cell libraries, level structures, linetypes, text fonts, and naming conventions as described in the most recent version of the VDOT CADD manual. Files furnished to KBR in electronic format shall be returned to VDOT and removed from KBR and its designer’s computer equipment upon completion of this contract.

Bridge Plans

Each sheet of the contract plans shall be completely dimensioned, and all elevations necessary for construction purposes shall be shown. In steel construction, complete details shall be furnished showing all sizes and overall dimensions of members, number and arrangement of all fasteners at joints, type and size of welds, except that they need not be dimensioned as completely as shop plans. This work shall be performed to the same degree of refinement as that performed by VDOT in its current work as will be shown upon request by specimen drawings.

All bridges for this project shall be designed for AASHTO HS 25 Loading or a Modified Alternate Military Loading (using the Load Factor (strength) Method).

Dead load deflections shall be computed and shown on the drawings, and in addition a camber diagram should be shown. The deflections are those anticipated to occur in the beam upon placement of the concrete deck, diaphragms, curbs and parapets. The camber for pre-stressed beams should be shown on the plans giving the expected net camber, which should be the amount of rise that should occur at midspan when stress transfer is made and the member is freely resting on storage supports. Sequence of concrete placement operations for continuous beams or girder construction shall be given, and all erection stresses shall be computed where
necessary for design. A summary table of moments, shears, reactions and stresses for primary load carrying members shall be included in the plans.

Quantities for contract plans shall be computed using Imperial (or U.S. Customary) and accurately computed and listed separately for each unit of the superstructure and substructure and, in the case of large units, for its component parts. Concrete shall be computed to a precision of the nearest cubic yard where the amount exceeds one thousand (1,000) cubic yards and to the nearest one-tenth (0.1) cubic yard below this amount. Reinforcing steel shall be computed to the nearest ten (10) pounds on the basis of theoretical weight, and a complete reinforcing steel schedule showing all lengths and bends shall be furnished by KBR. Structural steel shall be computed to a precision of one hundred (100) pounds. Other items shall be computed to a precision as instructed by VDOT.

**PLAN DEVELOPMENT**

Plans will be developed in several stages. The following sections describe the minimum requirements for each stage, the deliverables and major meetings associated with each development stage.

**Preliminary Field Inspection Plans**

The first plan development milestone is Preliminary Field Inspection. This represents approximately 15% level of completion.

**ROAD DESIGN**

**Survey**
- Electronic data files of the route survey
  - Master survey file
  - Utility file
  - Digital terrain database and file
  - Bridge situation survey file

**Initial Roadway Design**
- Preliminary horizontal and vertical alignment
- Typical sections
- Construction limits
- List of identified utilities conflicts
- Cross sections at critical locations
- Retaining wall locations

**Hydraulic Design**
- Preliminary hydrology and hydraulics (H/H) identification of storm water management area sizes, major drainage structure locations, and bridge opening requirements. Prepare preliminary Storm Water Management Report. Develop
concept for drainage at major fill locations, including concept for construction and maintenance of major structures, ditches, and channels.

- Identification of preliminary soil boring sites for PFI plans.

**Erosion & Sediment Control Calculations**

- Prepare computations for preliminary Erosion and Sediment Control Report.
- Prepare preliminary plans for Erosion and Sediment Control measures

**ENVIRONMENTAL**

**Preliminary Sound Barrier Design**

- Perform Air/Noise analysis revisions/prepare draft report
- Preliminary noise wall height, length, location (if required)

**Environmental Document**

- Determine locations where reevaluations will be required due to alignment shifts outside the Location Study/EIS Corridor.

**Environmental Permit Determination**

- No completed products at this time. Initiation of permit determination process to include determination of staff, estimate, and resources.

**Cultural Resources**

- Determine locations where additional efforts to identify historic properties and determine effect may be required due to potential impacts outside the Location Study/EIS Corridor

**Streams/Wetland Screening**

- No completed products at this time. Initiation of streams/wetland screening process to include determination of staff, estimate, and resources. Preliminary identification of wetland/stream impacts.

**Hazardous Material Screening**

- No completed products at this time. Initiation of hazardous materials screening process to include determination of staff, estimate, and resources. Preliminary identification of hazardous materials issues. Data base query by VISTA or similar service and field recon completed.

**GEOTECHNICAL INVESTIGATION**
Preliminary Soils Report
- Develop preliminary soils report, identifying preliminary slope needs, pavement section, and acid bearing material.
- Identify location of deep mines and surface mines.

Soils Investigation
- Initiate soils investigation to support PFI plans and subsequent soil report.
- Provide mapping showing soil boring locations.

Foundation Investigation
- Initiate foundation investigation to support PFI plans and subsequent major/minor foundation analysis and report.

**BRIDGE DESIGN**

PFI Preparation
- Concept Bridge Plans only (type, size, location). Preparation should include identification of any issues pertaining to bridge location, aesthetics, sidewalks, lighting, constructability, maintainability, site and environmental constraints.

**RIGHT OF WAY AND UTILITIES**

PFI Preparation
- No completed products required at this time. Preparation should include review of plans and recommendations of design changes to minimize RW/Utility impacts. Utility preparation should include drafting/discussing existing and proposed utilities.

**DELIVERABLES**

- Preliminary Field Inspection plans
- Preliminary Soils Report
- Preliminary Stormwater Management Report
- Preliminary Erosion & Sediment Control Report
- Concept Bridge Plans (TSL)
- Preliminary Roadside Development Report

**MEETINGS**

- Preliminary Field Inspection Meeting

**PUBLIC HEARING PLANS**

The second phase of Plan development is Public Hearing Plans, which include incorporation of comments from Preliminary Field Investigation Plans and refinements needed to bring them to a sufficient level of detail for presentation to the public (approximately 30% complete) at a Design Public Hearing.
ROAD DESIGN

Preliminary Road Design
- Continue horizontal/vertical alignment and intersection design
- Continue cross sections and plot proposed right of way lines and utilities where appropriate
- Include preliminary sound barrier design (if required) in roadway design plans
- Show connector road design and associated private entrances with profiles
- Develop construction access and haul road plans and profiles
- Identify surplus material disposal sites and borrow areas (if required) and develop E&S plans
- Develop roadside development plan (seeding) and develop E&S plans

Preliminary Hydraulic Design
- Continue stormwater management design.
- Place ditches, pipes, and inlets on cross section for right of way considerations.
- Design of temporary/permanent stream effects (relocation, restoration, and enhancement) for right of way consideration.

Preliminary Retaining Structure Design
- Provide retaining wall location and type for standard structure or standard structure with slight modification.

ENVIRONMENTAL

Preliminary E&S Control Design
- Develop sequences for E&S plans

Bridge Hydraulic Analysis
- Recommend waterway geometrics and appurtenant features for the structure and approach roadways.

Environmental Permit Determination
- Permitting agency coordination/partnering is initiated after initial permit determination as necessary.

Streams/Wetland Compensation
- Permitting agency coordination is initiated after initial permit determination as necessary.

Hazardous Materials Assessment
- Hazardous material site status determination for Phase I & II with avoidance/minimization recommendations. VDOT coordination will be required.
Environmental Document (EIS)
- Submit to FHWA through VDOT reevaluations of FEIS for any locations where alignment shifts create impacts outside the Corridor evaluated in the Location Study/FEIS.

Sound Barrier Design
- Provide preliminary sound barrier design (if required).

GEOTECHNICAL ISSUES

Major Structures Foundation Analysis and Report
- Complete foundation analysis and major structure report, which includes bridge foundation report.

Soils Report
- Continue preparation of final soils report to include final pavement section, slope requirements, impact from mining operations and acid bearing material assessment.

BRIDGE DESIGN

Preliminary Bridge Design (Stage I Plans)
- Produce Stage I Bridge plans (type, size, location) including temporary causeways and construction bridges for major stream crossings
- Provide Permit Sketches
- Provide hydrology and hydraulics analysis for stream crossings.

Preliminary Retaining Structure Design
- Provide retaining wall location and type for special design retaining structures.

TRAFFIC

Preliminary Traffic Control Device
- Develop a base map for signing and pavement marking plans.
- Prepare preliminary traffic control device plans to include “footprint” for major traffic control devices (i.e. signals).

RIGHT OF WAY AND UTILITIES

Right of Way Assessments/Easements
- Provide right of way data and analysis for Public Hearing to include number of parcels to be acquired and number of families and or businesses to be relocated.

Utility Assessments/Easements
- Preliminary plan sheets showing existing and proposed utility locations and easement needs.
PUBLIC INVOLVEMENT

- Prepare presentation graphics and displays for the Design Public Hearing. Attend a prebriefing coordination meeting with VDOT.
- Present the public hearing plans to citizens at one (1) approximate four-hour long evening meeting at a location to be determined near the project area. One hearing is anticipated for each major project section.

DELIVERABLES

- Design Public Hearing plans
- Draft Final Soils Report
- Stormwater Management Report
- Erosion & Sediment Control Report
- EIS Reevaluations
- Stage I Bridge Plans
- Bridge Foundation Report
- Preliminary Retaining Structure Design
- Presentation Graphics
- Design Public Hearing Mailings

MAJOR MEETINGS

- Design Public Hearing Coordination Meeting
- Design Public Hearing

FIELD INSPECTION PLANS

The third plan milestone is Field Inspection Plans. These include responses to comments from Public Hearing Plans and refinement to approximately 60% completion. This phase will mark the completion of plans to a level that allows the acquisition of right of way and establishes the basis for a firm fixed price for the construction.

ROAD DESIGN

Road Design
- Complete horizontal and vertical alignments.
- Complete cross sections and plot proposed right of way lines and utilities where appropriate.

Hydraulic Design
- Final stormwater management.
- Hydraulic design including ditches inlets, and other features that impact right of way.
• Final designs to include drainage structures effecting utilities, stormwater management ponds.
• Place ditches, pipes, and inlets on cross section for right of way considerations.
• Design of temporary/permanent stream effects (relocation, restoration, and enhancement) for right of way consideration.
• Provide scour analysis to include potential scour depth and recommendations for scour countermeasures.

**Retaining Structure Design**
• Provide retaining wall design for standard structure or standard structure with slight modification.

**Sound Barrier Design and Agreement (If Required)**
• Perform final sound barrier design

**E&S Control Design**
• Final design for E&S plan/phasing.

**ENVIRONMENTAL**

**Streams/Wetland Compensation & Mitigation**
• Finalize water quality permits and compensation.

**Hazardous Materials Assessment**
• Hazardous material site status determination for contaminated property acquisition with avoidance/minimization recommendations.

**Roadside Development Plan**
• Complete roadside development plan

**GEOTECHNICAL ISSUES**

**Soil Report**
• Prepare final soils report including pavement design, slope requirements and acid bearing material recommendation.

**Major/Minor Structure Foundation Analysis & Report**
• Complete Minor Structure Foundation analysis and report.
• Additional bridge foundation analysis if required.

**BRIDGE DESIGN**

**Bridge Design (Stage I Bridge Plans)**
• Final Stage I plans to include foundation recommendations.
**TRAFFIC CONTROL**

Traffic Control Device
- Control Device concept layout and location plans and general maintenance of traffic phasing.

**RIGHT OF WAY AND UTILITIES**

In-Plan Utility Design
- First submittal of plan sheets showing existing and proposed utility locations and easement agreements with commitments from utility owners.

Utility Easement Determination
- Provide input regarding schedule, construction cost and assessment of right of way related project needs.
- Provide input regarding schedule, construction cost, and assessment of utility related project needs.

**DELIVERABLES**

Field Inspection Plans
Final Stormwater Management Plans
Final Erosion & Sediment Control Plans
Final Soils Report
Final Minor Structure Foundation Analysis & Report
Final Stage I Bridge Plans

**MAJOR MEETINGS**

Field Inspection

**RIGHT OF WAY PLANS**

The fourth plan milestone is Right of Way Plans. These include responses to comments from Field Inspection Plans and refinement to approximately 65% completion. This phase will include the development of plans to a level that allows the completion of all acquisition of right of way and easements.

**ROAD DESIGN**

Road Design
- Incorporate field inspection comments into plans

**RIGHT OF WAY AND UTILITIES**

-9-
In-Plan Utility Design
• Final utility relocation plans

Utility Easement Acquisition
• Update plans to show all utility easements

ENVIRONMENTAL
• VDOT approval of Haz Mat Remediation Plans
• Incorporate Environmental Commitments into Plans

DELIVERABLES
• Right of Way Plans

MAJOR MEETINGS
• None

CONSTRUCTION PLANS
This plan milestone includes plans that may be submitted as soon as sufficient information is available to develop Construction plans for certain portions or elements of the project. These plans will be issued for construction following approval by the Department’s Chief Engineer. The roadway or bridge plans may be submitted to VDOT in logical subsections (such as from bridge to bridge) and consisting of work packages such as 1) clearing and grubbing along with erosion and siltation control, 2) grading and drainage, 3) paving, and 4) traffic control. Individual bridge plans may be submitted to VDOT in logical components such as 1) foundation, 2) remaining substructure, and 3) superstructure.

RECORD (AS-BUILT) PLANS
The final plan milestone is Record (As-Built) Plans. These plans will show all adjustments and revisions to the Construction Plans made during construction and serve as a permanent record of the actual location of all constructed elements. These plans will be provided in both hard copy and electronic formats.

DELIVERABLES
• Hard Copy paper plans
• Electronic plans on CD or other approved media
ATTACHMENT D TO
APPENDIX 6
OF THE
DESIGN-BUILD CONTRACT
INDEX TO SPECIAL PROVISIONS
AND
SPECIAL PROVISIONCopied Notes

The Special Provisions and Special Provision Copied Notes of the Virginia Department of Transportation Road and Bridge Specifications January 1994, which are included in the index attached hereto, are incorporated herein by reference in full as they exist on the date hereof.
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<td>c214a.doc</td>
<td>(1297)</td>
<td>SECTION 214.02(a) BLENDED HYDRAULIC CEMENT 12-10-96 (SPCN) ALL PROJECTS HAVING HYDRAULIC CEMENT CONCRETE (ALL CONCRETE ITEMS INCLUDING PIPE)</td>
<td></td>
<td></td>
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<tr>
<td>c217a.doc</td>
<td>(1297)</td>
<td>SECTION 217.09(B) READY MIX CONCRETE 11-01-94 (SPCN) ALL PROJECTS REQUIRING HYDRAULIC CEMENT CONCRETE (ALL CONCRETE ITEMS INCLUDING PIPE)</td>
<td></td>
<td></td>
</tr>
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<td>c217e.doc</td>
<td>(0900)</td>
<td>TABLE II-17 REQUIREMENTS FOR HYDRAULIC CEMENT CONCRETE 05-15-00 (SPCN) ALL PROJECTS HAVING HYDRAULIC CEMENT CONCRETE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c217f.doc</td>
<td>(0900)</td>
<td>SECTION 217.08(b) STRENGTH TESTS 03-29-00 (SPCN) ALL PROJECTS HAVING HYDRAULIC CEMENT CONCRETE</td>
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<td>c217g.doc</td>
<td>(0201)</td>
<td>SECTION 217.03 - HANDLING AND STORING MATERIALS 6-15-00 (SPCN) ALL PROJECTS REQUIRING HYDRAULIC CEMENT CONCRETE (ALL CONCRETE ITEMS INCLUDING PIPE)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c221b.doc</td>
<td>(0801)</td>
<td>SECTION 221.02 DETAIL REQUIREMENTS 1-8-01 (SPCN)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROGRAM FILE NAME</td>
<td>FILE NAME</td>
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<td>ISSUE DATE</td>
<td>INSTRUCTIONS</td>
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<td>-----------</td>
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<td>------------</td>
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<td>(0295)</td>
<td>ALL PROJECTS HAVING GUARDRAIL</td>
<td>8-30-94 Reissued 11-1-94 (SPCN)</td>
<td>PROJECTS HAVING EPOXY COATED REINFORCING STEEL</td>
</tr>
<tr>
<td>c223b.doc</td>
<td>(0201)</td>
<td>SECTION 223.02 (c) REINFORCING STEEL TO BE EPOXY COATED</td>
<td>6-15-00 (SPCN)</td>
<td>PROJECTS HAVING EPOXY COATED REINFORCING STEEL</td>
</tr>
<tr>
<td>c226a.doc</td>
<td>(0295)</td>
<td>SECTION 226 STRUCTURAL STEEL</td>
<td>11-1-94 (SPCN)</td>
<td>PROJECTS HAVING STRUCTURAL STEEL (NOT TRAFFIC ITEMS)</td>
</tr>
<tr>
<td>c226c.doc</td>
<td>(0801)</td>
<td>SECTION 226.02(h)3 STRUCTURAL STEEL</td>
<td>2-14-01 (SPCN)</td>
<td>PROJECTS HAVING STRUCTURAL STEEL</td>
</tr>
<tr>
<td>c229a.doc</td>
<td>(0396)</td>
<td>SECTION 229.02 (h) SAND CASTINGS</td>
<td>9-11-95 (SPCN)</td>
<td>ALL PROJECTS WITH CASTINGS (ALUMINUM ALLOY ONLY)</td>
</tr>
<tr>
<td>c229b.doc</td>
<td>(0200)</td>
<td>SECTION 229.02(l) BREAKAWAY SUPPORT COUPLINGS FOR LIGHT POLES AND SIGN POSTS</td>
<td>8-25-98 (SPCN)</td>
<td>ALL PROJECTS WITH LIGHT POLES AND SIGN POSTS (ALUMINUM ALLOY ONLY)</td>
</tr>
<tr>
<td>c232c.doc</td>
<td>(1297)</td>
<td>SECTION 232.02 – DETAIL REQUIREMENTS</td>
<td>6-27-97c (SPCN)</td>
<td>ALL PROJECTS WITH PIPE</td>
</tr>
<tr>
<td>c234a.doc</td>
<td>(0796)</td>
<td>SECTION 234.02 – DETAIL REQUIREMENTS</td>
<td>2-26-96 (SPCN)</td>
<td>PROJECTS WITH PAVEMENT MARKINGS</td>
</tr>
<tr>
<td>c236a.doc</td>
<td>(0595)</td>
<td>SECTION 236.02 (a)1 STRUCTURAL TIMBER AND LUMBER</td>
<td>11-30-94 (SPCN)</td>
<td>PROJECTS HAVING STRUCTURAL TIMBER AND LUMBER (GUARDRAIL AND SIGNS WITH WOODEN POST AND TIMBER BRIDGES)</td>
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<tr>
<td>c237.doc</td>
<td>(0200)</td>
<td>SECTION 237 – BEDDING MATERIAL AND BEARING PADS</td>
<td>4-12-99 (SPCN)</td>
<td>PROJECTS HAVING BEARING PADS.</td>
</tr>
<tr>
<td>PROGRAM FILE NAME</td>
<td>FILE NAME</td>
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<td>(0997)</td>
<td>SECTION 242.02 (c) TEMPORARY SILT FENCES, GEOTEXTILE FABRIC Silt BARRIERS, AND FILTER BARRIERS</td>
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<td></td>
</tr>
<tr>
<td></td>
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<td>3-10-97 (SPCN)</td>
<td></td>
<td></td>
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<td>PROJECTS HAVING GEOTEXTILE FABRIC SILT FENCES AND FILTER BARRIERS</td>
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<td>SECTION 244.02 – TOPSOIL</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td>3-16-99 (SPCN)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROJECTS WITH WETLAND MITIGATION</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c302f.doc</td>
<td>(1297)</td>
<td>SECTION 302.03(b) – PRECAST DRAINAGE STRUCTURES</td>
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<td></td>
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<td>12-10-96 (SPCN)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROJECTS HAVING PRECAST UNITS, INCLUDING PRECAST BOX CULVERTS AND STRUCTURES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c303f.doc</td>
<td>(0200)</td>
<td>SECTION 303.03 (e) 1. TEMPORARY SILT FENCES</td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>4-29-99 (SPCN)</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td>(0200)</td>
<td>SECTION 303.04(h)-PROCEDURES</td>
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<td></td>
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<td>05-06-99 (SPCN)</td>
<td></td>
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<td>ALL PROJECTS.</td>
<td></td>
<td></td>
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<td>c309a.doc</td>
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<td>SECTION 309.05-DENSITY REQUIREMENTS</td>
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<td>3-5-99 (SPCN)</td>
<td></td>
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<td></td>
<td></td>
</tr>
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<td>(0295)</td>
<td>SECTION 316.02 (a) CONCRETE</td>
<td></td>
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<td>3-1-94</td>
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<td></td>
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<td>(0295)</td>
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<td>11-1-94 (SPCN)</td>
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<td>PROJECTS HAVING CONCRETE PILES AND SHELLS FOR CAST-IN-PLACE PILES (PILES OVER 25,000 POUNDS)</td>
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<td>c403b.doc</td>
<td>(0295)</td>
<td>SECTION 403.07 (c) 1. b. TENSION</td>
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<td></td>
</tr>
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<td></td>
<td>11-1-94 (SPCN)</td>
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<td>PROJECTS HAVING PRESTRESSED CONCRETE PILES</td>
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<td>c403e.doc</td>
<td>(1297)</td>
<td>SECTION 403 BEARING PILES</td>
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<td></td>
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<td>6-10-97 (SPCN)</td>
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</tr>
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<td>PROGRAM FILE NAME</td>
<td>FILE NAME</td>
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<td>ISSUE DATE</td>
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<td>4-7-99 (SPCN)</td>
<td>PROJECTS WITH HYDRAULIC CEMENT CONCRETE BRIDGE DECKS</td>
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<td>c405a.doc</td>
<td>(0801)</td>
<td>SECTION 405.05 - PROCEDURES (a) FORMS:</td>
<td>1-24-01 (SPCN)</td>
<td>PROJECTS WITH PRESTRESSED CONCRETE</td>
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<td>c406a.doc</td>
<td>(0295)</td>
<td>SECTION 406.03 (b) PROTECTING MATERIAL</td>
<td>Reissued 11-1-94 (SPCN)</td>
<td>PROJECTS HAVING EPOXY COATED REINFORCING STEEL</td>
</tr>
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<td>PROJECTS HAVING CONCRETE BRIDGE DECKS AND BOX CULVERTS</td>
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<td>SECTION 406.03 (d) PLACING AND FASTENING</td>
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<td>PROJECTS HAVING EPOXY COATED REINFORCING STEEL ON BRIDGE DECKS AND BOX CULVERTS</td>
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<td>SECTION 407.04 FABRICATION PROCEDURES</td>
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<td>PROJECTS HAVING STEEL STRUCTURES</td>
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<td>(1195)</td>
<td>SECTION 407.06 ERECTION PROCEDURES</td>
<td>6-8-95 (SPCN)</td>
<td>PROJECTS HAVING BRIDGE WIDENING STRUCTURAL STEEL</td>
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<td>SECTION 407.06 (b) 3. b. TURN-OF-NUT TIGHTENING</td>
<td>10-20-00 (SPCN)</td>
<td>PROJECTS HAVING STRUCTURAL STEEL</td>
</tr>
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<td>c407g.doc</td>
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<td>SECTION 407.06(b)1. BOLTS, NUTS AND WASHERS:</td>
<td>5-14-01 (SPCN)</td>
<td>PROJECTS HAVING STEEL STRUCTURES</td>
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<td>SECTION 407.04(j) STUD SHEAR CONNECTOR</td>
<td>09-18-01 (SPCN)</td>
<td>PROJECTS HAVING STEEL STRUCTURES</td>
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<td>SECTION 408.03(g) PLACEMENT</td>
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## SPECIAL PROVISION COPIED NOTES INDEX FOR COALFIELDS EXPRESSWAY

<table>
<thead>
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<th>FILE NAME</th>
<th>TITLE</th>
<th>ISSUE DATE</th>
</tr>
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<tbody>
<tr>
<td>4-12-99 (SPCN)</td>
<td>SECTION 505.03 - PROCEDURES</td>
<td>8-21-98 (SPCN)</td>
<td>PROJECTS HAVING BEARING DEVICES OR ANCHORS</td>
</tr>
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<td>c505d.doc (0900)</td>
<td>SECTION 519.02 (m) INTERLOCKING PANELS</td>
<td>04-07-99 (SPCN)</td>
<td>PROJECTS HAVING SOUND BARRIER WALLS.</td>
</tr>
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<td>c519.doc (0200)</td>
<td>SECTION 603.03 (c) APPLYING FERTILIZER</td>
<td>Reissued 11-1-94 (SPCN)</td>
<td>PROJECTS HAVING SEEDING</td>
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<td>SECTION 701 – TRAFFIC SIGNS</td>
<td>07-13-00 (SPCN)</td>
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<td>106B</td>
<td>SECTION 106.04 – DISPOSAL AREAS</td>
<td>1-31-01</td>
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<td>s107c.doc</td>
<td>107C</td>
<td>VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES)</td>
<td>6-17-99</td>
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<td>s107d.doc</td>
<td>107D</td>
<td>STORM WATER POLLUTION PREVENTION PLAN</td>
<td>6-17-99ccc</td>
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<td>s110e.doc</td>
<td>110E</td>
<td>SECTION 110.04 – Use of Disadvantage Business Enterprises</td>
<td>01-05-00c</td>
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<td>s211h.doc</td>
<td>211H</td>
<td>SECTION 211 ASPHALT CONCRETE MIXTURES (SUPERPAVE)</td>
<td>9-27-00</td>
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<td>s212.doc</td>
<td>212</td>
<td>SECTION 212 JOINT MATERIALS</td>
<td>11-25-95</td>
</tr>
<tr>
<td>s213a.doc</td>
<td>213A</td>
<td>SECTION 213 DAMP-PROOFING MATERIALS</td>
<td>11-22-93 Reissued 11-1-94c</td>
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<td>226</td>
<td>SECTION 226 STRUCTURAL STEEL</td>
<td>6-26-97c</td>
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<td>231C</td>
<td>SECTION 231 - PAINT</td>
<td>4-19-00c</td>
</tr>
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</table>
### SPECIAL PROVISIONS INDEX FOR COALFIELDS EXPRESSWAY

<table>
<thead>
<tr>
<th>PROGRAM FILE NAME</th>
<th>FILE NAME</th>
<th>TITLE</th>
<th>ISSUE DATE</th>
<th>INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>s235a.doc</td>
<td>235A</td>
<td>SECTION 235 RETRO-REFLECTORS</td>
<td>2-27-95</td>
<td>PROJECTS HAVING PAVEMENT MARKERS, DELINEATORS, TEMPORARY PAVEMENT MARKERS OR CONCRETE TRAFFIC BARRIER SERVICE (USE WITH SP 702)</td>
</tr>
<tr>
<td>s244.doc</td>
<td>244</td>
<td>SECTION 244 - ROADSIDE DEVELOPMENT MATERIALS</td>
<td>8-12-96</td>
<td>PROJECTS REQUIRING SEEDING AND FERTILIZERS</td>
</tr>
<tr>
<td>s246d.doc</td>
<td>246D</td>
<td>SECTION 246 PAVEMENT MARKING</td>
<td>7-17-00</td>
<td>PROJECTS HAVING PAVEMENT LINE MARKING</td>
</tr>
<tr>
<td>s247.doc</td>
<td>247</td>
<td>SECTION 247- REFLECTIVE SHEETING</td>
<td>9-15-00</td>
<td>PROJECTS HAVING REFLECTIVE SHEETING</td>
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<td>s302f.doc</td>
<td>302F</td>
<td>FLOWABLE BACKFILL</td>
<td>11-30-98</td>
<td>PROJECTS HAVING CULVERTS OR UNDERGROUND UTILITIES</td>
</tr>
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<td>5-1-95</td>
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<tr>
<td>s303e/doc</td>
<td>303E</td>
<td>SOIL/GLASS FILLS</td>
<td>5-22-95</td>
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<tr>
<td>s315i.doc</td>
<td>315I</td>
<td>RUMBLE STRIP</td>
<td>7-19-99</td>
<td>WHEN REQUESTED BY THE DESIGNER</td>
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<td>s315g.doc</td>
<td>315G</td>
<td>STABILIZED OPEN GRADED MATERIAL</td>
<td>9-10-97</td>
<td></td>
</tr>
<tr>
<td>s315j.doc</td>
<td>315J</td>
<td>SECTION 315 ASPHALT CONCRETE PAVEMENT (SUPERPAVE)</td>
<td>10-4-00c</td>
<td>PROJECTS HAVING SUPERPAVE, ASPHALT CONCRETE PAVEMENT</td>
</tr>
<tr>
<td>s404d.doc</td>
<td>404D</td>
<td>HYDRAULIC CEMENT CONCRETE OPERATIONS</td>
<td>3-31-98</td>
<td>PROJECTS WITH CONCRETE BRIDGES AND BOX CULVERTS</td>
</tr>
<tr>
<td>s407.doc</td>
<td>407</td>
<td>TOOTH EXPANSION JOINT</td>
<td>8-1-91</td>
<td>11-1-94</td>
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<td>PROJECTS HAVING TOOTH EXPANSION JOINT</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

茄煤田BDs流亚路

January 11, 2002

COALFIELDS EXPRESSWAY

Attachment D to Appendix 6

DESIGN-BUILD CONTRACT
<table>
<thead>
<tr>
<th>PROGRAM FILE NAME</th>
<th>FILE NAME</th>
<th>TITLE</th>
<th>ISSUE DATE</th>
<th>INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>s407a.doc</td>
<td>407A</td>
<td>METALLIZATION OF FERROUS METAL SURFACES</td>
<td>1-5-98</td>
<td>WHEN REQUESTED BY THE DESIGNER</td>
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<tr>
<td>s408a.doc</td>
<td>408A</td>
<td>HIGH LOAD MULTI-ROTATIONAL BEARINGS</td>
<td>3-25-92cc</td>
<td>Reissued 11-1-94</td>
</tr>
<tr>
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<td>Projects having high load multi-rotational bearings, TFE pot bearings</td>
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<td>(shown on plans)</td>
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<tr>
<td>s411a.doc</td>
<td>411A</td>
<td>PROTECTIVE COATING OF METAL IN STRUCTURES</td>
<td>4-19-00</td>
<td>Projects having steel to be painted</td>
</tr>
<tr>
<td>s413.doc</td>
<td>413</td>
<td>SECTION 413 - DISMANTLING AND REMOVING EXISTING STRUCTURES OR REMOVING PORTIONS OF EXISTING STRUCTURES</td>
<td>6-14-00cc</td>
<td>Projects requiring work on existing structures - must be used in conjunction with special provision 411A dated (April 19, 2000c)</td>
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<tr>
<td>s416.doc</td>
<td>416</td>
<td>SECTION 416 WATERPROOFING</td>
<td>12-7-93cc</td>
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POLICY STATEMENT

It is the policy of Kellogg Brown and Root (the Contractor) that all Disadvantaged Business Enterprises ("DBE") shall have the maximum opportunity to participate in the performance of the Contract. Our commitment to this policy will be demonstrated by taking the necessary and reasonable steps to ensure that DBE’s are afforded the opportunity to compete for and perform work on this Project.

PLAN OBJECTIVES

The objective of this plan is to provide guidance in our efforts to meet or exceed the Department's overall DBE Participation Goal of 10.50%.

PLAN STRATEGY

1. Organization

Kellogg Brown & Root will designate a DBE liaison officer who will be assigned the responsibility of actively administering this plan, and encouraging and promoting the utilization of DBE’s in the performance of the Contract.

2. Subcontracting

Establishing subcontracting goals for DBE’s for this Project will include a review and analysis of the items of work to be performed; the complexity of various items of work; the time frame in which the work is to be performed; and the availability of DBE’s. This process will allow for the identification of items of work that lends them to subcontracting to qualified DBE firms.

3. Implementation

Once specific opportunities for DBE participation are identified, the following guidelines will be implemented to encourage and promote interest in the Project from qualified DBE firms:

- Arrange pre-solicitation or pre-bid meetings at which potential DBE’s can be informed of any subcontracting opportunities.

- Advertise in general circulation any subcontracting opportunities on the Project.
• Provide written notice to specific DBE firms that their interest in the Project is being solicited in sufficient time to allow the DBE’s to participate in the subcontracting process effectively.

• Follow-up solicitations of interest by contacting potential DBE’s to determine any level of interest that they may have in the Project

• Provide interested DBE’s with adequate information about scope of work and the requirements of the Contract.

• Negotiate in good faith with interested DBE’s, not rejecting any DBE as unqualified without sound reasons based upon financial aspects and capabilities.

• Make efforts to assist interested DBE’s in obtaining bonding or insurance required by the Kellogg Brown & Root or the Contract.

• Make efforts to assist interested DBE’s in obtaining the necessary equipment, supplies, materials or other necessary or related services.

• Utilize available services and community organizations in soliciting potential DBE firms.

PARTICIPATION AND DOCUMENTATION

Once a firm is determined to be an eligible DBE, the appropriate dollar value of the work performed will be counted toward the applicable DBE goal. DBE participation will be counted toward meeting the goals established as follows:

• The total dollar value of a contract will be counted for DBE’s that perform a commercially useful function. A DBE will be considered as performing a commercially useful function when it is responsible for the execution of a distinct element of the work and carries out it’s responsibilities by actually performing, managing and supervising the work involved.

• When a DBE firm subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE’s subcontractor is itself a DBE.

• If materials or supplies are obtained from a DBE manufacturer, supplier or vendor, 100% of the expenditure is counted towards the DBE goal. If materials or supplies are purchased from a DBE regular dealer, only 60% of the cost of the materials or supplies is counted toward the DBE goal.

Kellogg Brown & Root will, throughout the life of the Project, maintain records sufficient to document and demonstrate its good faith efforts used to identify and award subcontracts to qualified DBE firms. Kellogg Brown & Root will also provide the Virginia Department of
Transportation reasonable documentation to assist in verifying and reporting DBE participation on the Project.
APPENDIX 9

DESIGN-BUILD CONTRACT

SECTION 101--DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS

101.01--Abbreviations and Acronyms.

In these specifications and in other Contract Documents, the following abbreviations and acronyms shall be interpreted as follows:

AAR  Association of American Railroads
AASHTO American Association of State Highway and Transportation Officials
ABS  Acrylonitrilebutadiene-styrene (an elastomer)
AC   Alternating current
ACI  American Concrete Institute
ADT  Annual average daily traffic
AED  Associated Equipment Distributors
AISC American Institute of Steel Construction
AISI American Iron and Steel Institute
ANSI American National Standards Institute
APA American Plywood Association
API  American Petroleum Institute; American Pipe Institute
AREMA American Railway Engineering and Maintenance-of-Way Association
ASCE American Society of Civil Engineers
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
AWG American wire gage
AWPA American Wood Preservers Association
AWS American Welding Society
AWWA American Water Works Association
BOCA Building Officials and Code Administrators

CBR California bearing ratio
CRSI Concrete Reinforcing Steel Institute

DBE Disadvantaged Business Enterprise
DC  Direct current
DHV Design hourly volume

EEI Edison Electric Institute
EEO  Equal employment opportunity
EIA Electronic Industries Association
EPA Environmental Protection Agency
EPDM Ethylene-propylenedienemonomer (an elastomer)
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tr>
<td>F/A</td>
<td>Filler/asphalt ratio</td>
</tr>
<tr>
<td>FHWA</td>
<td>Federal Highway Administration</td>
</tr>
<tr>
<td>FS</td>
<td>Federal Specifications, General Services Administration</td>
</tr>
<tr>
<td>ICEA</td>
<td>Insulated Cable Engineers Association</td>
</tr>
<tr>
<td>IMSA</td>
<td>International Municipal Signal Association</td>
</tr>
<tr>
<td>ITE</td>
<td>Institute of Transportation Engineers</td>
</tr>
<tr>
<td>LCD</td>
<td>Liquid crystal display</td>
</tr>
<tr>
<td>LPG</td>
<td>Liquid petroleum gas</td>
</tr>
<tr>
<td>MBE</td>
<td>Minority Business Enterprise</td>
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<tr>
<td>MEKP</td>
<td>Methyl ethyl ketone peroxide</td>
</tr>
<tr>
<td>MIL</td>
<td>Military specifications</td>
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<tr>
<td>MSDS</td>
<td>Materials Safety Data Sheet</td>
</tr>
<tr>
<td>MUTCD</td>
<td>Manual on Uniform Traffic Control Devices for Streets and Highways and the Virginia supplement to same</td>
</tr>
<tr>
<td>NEC</td>
<td>National Electrical Code</td>
</tr>
<tr>
<td>NEMA</td>
<td>National Electrical Manufacturers Association</td>
</tr>
<tr>
<td>NIST</td>
<td>National Institute of Standards and Technology</td>
</tr>
<tr>
<td>NRC</td>
<td>Nuclear Regulatory Commission</td>
</tr>
<tr>
<td>PCI</td>
<td>Prestressed Concrete Institute</td>
</tr>
<tr>
<td>PE</td>
<td>Polyethylene</td>
</tr>
<tr>
<td>PTL</td>
<td>Plywood Testing Laboratory</td>
</tr>
<tr>
<td>PVC</td>
<td>Polyvinylchloride</td>
</tr>
<tr>
<td>PVF</td>
<td>Polyvinylfluoride</td>
</tr>
<tr>
<td>REA</td>
<td>Rural Electrification Administration</td>
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<tr>
<td>SAE</td>
<td>Society of Automotive Engineers</td>
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<tr>
<td>SI</td>
<td>The International System of Units</td>
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<tr>
<td>SPIB</td>
<td>Southern Pine Inspection Bureau</td>
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<tr>
<td>SSPC</td>
<td>Steel Structures Painting Council</td>
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<tr>
<td>TAPPI</td>
<td>Technical Association of Pulp and Paper Industry</td>
</tr>
<tr>
<td>TFE</td>
<td>Polytetrafluoroethylene</td>
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<tr>
<td>UL</td>
<td>Underwriters' Laboratories, Inc.</td>
</tr>
<tr>
<td>VAC</td>
<td>Volts alternating current</td>
</tr>
<tr>
<td>VDC</td>
<td>Volts direct current</td>
</tr>
<tr>
<td>VDOT</td>
<td>Virginia Department of Transportation</td>
</tr>
<tr>
<td>VFA</td>
<td>Voids filled with asphalt</td>
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<tr>
<td>VMA</td>
<td>Voids in mineral aggregate</td>
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<tr>
<td>VOSH</td>
<td>Virginia Occupational and Health Administration</td>
</tr>
<tr>
<td>VTM</td>
<td>Virginia test methods; voids in total mix</td>
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<tr>
<td>WBE</td>
<td>Women Business Enterprise</td>
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101.02—Terms.

In these specifications and in other Contract Documents, the following terms and pronouns used in place of them shall be interpreted as follows:

- **A** -

**Alkali Soil.** Soil in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent based on total solids.

- **B** -

**Backfill.** Material used to replace or the act of replacing material removed during construction; may also denote material placed or the act of placing material adjacent to structures.

**Balance Point.** The approximate point, based on estimated shrinkage or swell, where the quantity of earthwork excavation and borrow, if required, is equal to the quantity of embankment material plus any surplus excavation material.

**Base Course.** A layer of material of specified thickness on which the intermediate or surface course is placed.

**Base Flood.** The flood or tide having a one percent chance of being exceeded in any given year.

**Board.** Commonwealth Transportation Board of Virginia.

**Borrow.** Suitable material from sources outside the roadway that is used primarily for embankments.

**Brackish Water.** Water in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent based on total solids.

**Bridge.** A structure, including supports, that is erected over a depression or an obstruction, such as water, a highway, or a railway, that has a track or passageway for carrying traffic.

- **C** -

**Calendar Day.** Any day shown on the calendar.

**Camber.** A vertical curvature induced or fabricated into beams or girders and a deck slab or slab span formwork; a vertical curvature set in the grade line of a pipe culvert to accommodate differential settlement.

**Channel.** A water course or drainage way.

**Commissioner.** Commonwealth Transportation Commissioner.

**Composite Hydrograph.** A graph showing the mean daily discharge versus the calendar day, indicating trends in high and low flow for a one year period.
**Construction Area.** The area where authorized construction occurs.

**Construction Limits.** The intersection of side slopes, including slope rounding, with the original ground, plus slopes for drainage ditches or incidental construction.

**Contract.** The written agreement executed between the Department and the Contractor that sets forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, furnishing of materials and labor, and basis of payment. The Contract also includes these specifications; supplemental specifications; special provisions; special provision copied notes; plans; standard drawings; change orders; and work orders and agreements that are required to complete the construction of the specified work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument. Oral representations or promises shall not be considered a part of the Contract.

**Contractor.** Kellogg Brown & Root, and its permitted successors and assigns.

**Cul-de-sac.** An area at the terminus of a dead-end street or road that is constructed for the purpose of allowing vehicles to turn around.

**Culvert.** A structure that is not classified as a bridge which provides an opening under any roadway.

**Cut.** The portion of a roadway formed by excavating below the surface of the earth.

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**Deflection.** The vertical movement occurring between the supports of a bridge superstructure or its components (beams, girders, and slabs) that results from their own weight and from dead and live loads. Although all parts of a structure are subject to deflections, usually only those deflections that occur in the superstructure are of significance during construction.

**Department.** Virginia Department of Transportation.

**Deputy Commissioner.** The assistant to the Commissioner who performs such of the Commissioner's duties as have been delegated to him by the Commissioner.

**Design Flood.** The magnitude of flood that a given structure can convey without exceeding a designated flood level.

**Disposable Material.** Material generally found to be unsuitable for roadway construction or material that is surplus.

**Disposal Areas.** Areas generally located off the Project right of way where unsuitable or surplus material is deposited.

**Drainage Ditch.** An artificial depression constructed to carry off surface water.
Earthwork. The work consisting of grubbing, drainage, roadway excavation, embankment excavation, borrowing, grading, placing rock, and preparing subgrades.

Easement (Right of way). A grant of the right to use property for a specific use.

Embarkment. A structure of soil, soil aggregate, or broken rock between the existing ground and subgrade.

Employee. Any person working on the Project specified in the Contract who is under the direction or control of or receives compensation from the Contractor or subcontractor.

Engineer. The Department Chief Engineer, who acts directly or through his duly, authorized representative. The representative acts within the scope of the particular duties assigned to him or the authority given to him.

Equipment. Machinery, tools, and other apparatus, together with the necessary supplies for upkeep and maintenance, that are necessary for acceptable completion of the work.

Falsework. A framework of wood or steel used to support forms for the construction of concrete slab spans or t-beams, or provide temporary support for structural units during the construction or reconstruction of permanent supports.

Federal Agencies or Officers. An agency or officer of the federal government and any agency or officer succeeding in accordance with the law to the powers, duties, jurisdictions, and authority of the agency or officer mentioned.

Flood Frequency. A statistical average recurrence interval of floods of a given magnitude.

Formwork. A temporary structure or mold used to retain the plastic or fluid concrete in its designated shape until it hardens. Formwork shall be designed to resist the fluid pressure exerted by plastic concrete and additional fluid pressure generated by vibration and temporary construction loads.

Frontage street or road. A local street or road auxiliary to and located on the side of a highway for service to abutting property and adjacent areas and control of access.


Grade Separation. Any structure that provides a traveled way over or under another traveled way or stream.

Highway. The entire right of way reserved for use in constructing or maintaining the roadway and its appurtenances.

Historical Flood Level. The highest flood level that is known to have occurred at a given location.
Hydrologic Data Sheet. A tabulation of hydrologic data for facilities conveying a 100-year discharge equal to or greater than 500 cubic feet per second.

- I -

Invert. The lowest point in the internal cross section of a pipe or other drainage structure.

- M -

Material. Any substance that is used in the work specified in the Contract.

Median. The portion of a divided highway that separates the traveled ways.

- O -

Ordinary High Water. A water elevation based on analysis of all daily high waters that will be exceeded approximately 25 percent of the time during any 12 month period.

Overtopping Flood. The magnitude of flood that just overflows the traveled way at a given structure and/or on the approach traveled way of such structure.

- P -

Pavement Structure. The combination of subbase, base, and surface courses that is placed on a subgrade to support the traffic load and distribute it to the roadbed.

Plans. The “Plans and Specifications” as defined in the Contract.

Profile Grade. The line of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal center line of the roadbed.

- Q -

QA Manager. The specified person responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program as described in Appendix 6(Scope of Work), Attachment C of the Design-Build Contract.

- R -

Ramp. A connecting roadway between two highways or traveled ways or between two intersecting highways at a grade separation.

Road. A general term denoting a public way for purposes of vehicular travel including the entire area within the right of way; the entire area reserved for use in constructing or maintaining the roadway and its appurtenances.
**Roadbed.** The graded portion of a highway within the top and side slopes that is prepared as a foundation for the pavement structure and shoulders.

**Roadbed Material.** The material below the subgrade in cuts, embankments, and embankment foundations that extends to a depth which affects the support of the pavement structure.

**Roadside.** A general term that denotes the area within the right of way that adjoins the outer edges of the roadway; extensive areas between the roadways of a divided highway.

**Roadside Development.** Items that are necessary to complete a highway that provide for the preservation of landscape materials and features; rehabilitation and protection against erosion of areas disturbed by construction through placing seed, sod, mulch, and other ground covers; and such suitable plantings and other improvements as may increase the effectiveness and enhance the appearance of the highway.

**Roadway.** The portion of a highway within the limits of construction and all structures, ditches, channels, and waterways that are necessary for the correct drainage thereof.

**- S -**

**Sea Water.** Water in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent of total solids.

**Select Borrow.** Borrow material that has specified physical characteristics.

**Select Material.** Material obtained from roadway cuts, borrow areas, or commercial sources that is designated or reserved for use as a foundation for the subbase, subbase material, shoulder surfacing, or other specified purposes.

**Shoulder.** The portion of the roadway contiguous with the traveled way that is for the accommodation of stopped vehicles, emergency use, and lateral support of the base and surface courses.

**Sidewalk.** The portion of the roadway constructed primarily for the use of pedestrians.

**Skew.** The acute angle formed by the intersection of a line normal to the center line of the roadway with a line parallel to the face of the abutments or, in the case of culverts, with the center line of the culverts.

**Special Provision.** Specifications or requirements for the Project, as set forth in Attachment D to Appendix 6.

**Special Provision Copied Note.** Specifications or requirements, usually limited in scope, for the Project, as set forth in Attachment D to Appendix 6.

**Specifications.** A general term that includes all directions, provisions, and requirements contained herein and those that may be added or adopted as special provisions or Special Provision Copied Notes. All are necessary for the proper fulfillment of the Contract.

**Standard Drawings.** Unless otherwise specified, applicable drawings in the Department’s *Road and Bridge Standards* and such other standard drawings as are referred to on the Plans.
State. Commonwealth of Virginia.

Station. When used as a definition or term of measurement, 100 meters Metric, or 100 feet Imperial as indicated on the section documents.

Street. A general term denoting a public way for purposes of vehicular travel including the entire area within the right of way; the entire right of way reserved for use in constructing or maintaining the roadway and its appurtenances.

Structures. Bridges, culverts, catch basins, inlets, retaining walls, cribs, manholes, end walls, buildings, steps, fences, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the work and are not otherwise classed herein.

Subbase. A layer(s) of specified or selected material of designed thickness that is placed on a subgrade to support a base course.

Subgrade. The top surface of a roadbed shaped to conform to the typical section on which the pavement structure and shoulders are constructed.

Subgrade Stabilization. The modification of roadbed soils by admixing with stabilizing or chemical agents that will increase the load bearing capacity, firmness, and resistance to weathering or displacement.

Substructure. The part of a structure that is below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the back walls, wingwalls, and wing protection railings.

Superstructure. The portion of a structure that is not defined as substructure.

Surface course. One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and disintegrating effects of weather. The top layer is sometimes called the wearing course.

Surplus material. Material that is present on the Project as a result of unbalanced earthwork quantities, excessive swell, slides, undercutting, or other conditions beyond the control of the Contractor.

- T -

Temporary structure. Any structure that is required to maintain traffic while permanent structures or parts of structures specified in the Contract are constructed or reconstructed. The temporary structure shall include earth approaches.

Ton. A metric ton, 1,000 kilograms; or an Imperial ton, 2000 pounds as indicated on the section documents.

Top of earthwork. The uppermost surface of the embankment excavation, exclusive of select material, that is shaped to conform with the typical section.

Traveled way. The portion of the roadway for the movement of vehicles, exclusive of shoulders.
- W -

Wearing course. See Surface course.

SECTION 102—NOT USED

SECTION 103—NOT USED

SECTION 104—SCOPE OF WORK

104.01—Intent of Contract.

The intent of the Contract is to provide for completion of the work specified therein.

104.02—Not Used

104.03—Not Used

104.04—Maintenance During Construction.

This Section 104.04 applies to the extent it does not conflict with the approved Construction Traffic Management Plan.

The Contractor shall maintain the work from the beginning of construction operations until Final Acceptance. Maintenance shall constitute continuous and effective work prosecuted day by day with adequate equipment and forces to such end that the roadway and structures, including barricades and warning signs as provided for in accordance with the requirements of Section 107.10, are maintained in a satisfactory condition at all times.

When a Contract specifies placing the course on another course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

The road shall be kept open to all traffic while undergoing improvements. The Contractor shall keep the portion of the Project being used by public, pedestrian, and vehicular traffic in such condition that traffic will be adequately accommodated. However, removal of snow and control of ice on roads open to public travel will be performed by the Department.

The Contractor shall bear all costs of performing maintenance work before final acceptance and of constructing and maintaining necessary approaches, crossings, intersections, and other features without direct compensation except as provided for herein. However, when the Contractor confines his operation to the surface of the roadway and reasonable width of the shoulder and the surface is not disturbed or damaged by his operations or equipment, he shall not be responsible for the maintenance of the surface that remains undisturbed or undamaged.

The Contractor shall keep the portions of the road being used by the public free from irregularities and obstructions that could present a hazard or annoyance to traffic. Contractor shall be responsible for
implementing and maintaining adequate dust control measures. When directed by the QA Manager, allaying of dust shall be performed in accordance with the requirements of Section 511 and cost for such work shall be included in the Contract Price. Holes in hard surface pavements shall be filled with approved asphalt patching material.

(a) **Maintenance of Traffic During Suspension of Work:** During any suspension of work, the Contractor shall temporarily open to traffic such portions of the Project and temporary roadways as may be agreed on by the Engineer.

(b) **Delays:** Unless otherwise approved, two-way traffic shall be maintained at all times. The Contractor shall not stop traffic without permission.

If one-way traffic is approved, the Contractor shall provide flaggers to direct the traffic. When specified in the Construction Traffic Management Plan, pilot vehicles shall be furnished in accordance with the requirements of Section 512.

(c) **Connections and Entrances:** When directed by the QA Manager, stabilization or surfacing material shall be applied to connections and entrances.

The Contractor shall schedule construction operations so that approved continuous access is provided for all property adjacent to the construction when the property is shown on the plans to require access. When frontage roads are shown on the plans, they shall be constructed prior to the closing of any access routes unless other approved access is provided and is acceptable to the property owner.

(d) **Grading Operations:** When the Contractor elects to complete the rough grading operations for the entire Project Section or exceed the length of one full day's surfacing operations, the rough grade shall be machined to a uniform slope from the top edge of the existing pavement to the ditch line.

When the surface is to be widened on both sides of the existing pavement, construction operations involving grading or paving shall not be conducted simultaneously on sections directly opposite each other.

The surface of pavement shall be kept free from soil and other materials that might be hazardous to traffic. Prior to opening of new pavement to traffic, shoulders shall be roughly dressed for a distance of 3 feet from the edge of the paved surface.

(e) **Temporary Structures:** The Contractor shall construct, maintain, and remove temporary structures and approaches necessary for use by traffic. Unless otherwise specified in the Contract, the cost of these operations shall be included in the Fixed Price Amount of the Contract Price. After new structures have been opened to traffic, temporary structures and approaches shall be removed. The materials contained therein shall remain the property of the Contractor.

The proposed design of temporary structures shall be submitted to the Engineer prior to the beginning of construction in accordance with the requirements of the Contract Documents.

(f) **Failure To Maintain Roadway or Structures:** If the Contractor fails to remedy unsatisfactory maintenance immediately after receipt of a notice by the Engineer, the Engineer may proceed
with adequate forces, equipment, and material to maintain the Project. The cost of the maintenance, plus 25 percent for supervisory and administrative personnel, will be deducted from moneys due the Contractor for the Project.

(g) **Haul Route:** The Contractor shall select haul routes between the Project and material source(s) that will minimize disturbance to the community. The Engineer may select alternate haul routes, divide the hauling traffic over several routes, and impose other restrictions deemed necessary to minimize the impact of the hauling operation on local residents.

104.05—Removing and Disposing of Structures and Obstructions.

The Contractor shall remove and dispose of or store, fences, buildings, structures, or encumbrances within the construction limits. Materials so removed, including existing drains or pipe culverts, shall become the property of the Contractor.

(a) **Signs:** The Contractor shall relocate street name signs, no parking signs, and other traffic signs within the construction limits that conflict with construction work. Signs that are not needed for the safe and orderly control of traffic during construction shall be removed and stored at a designated location within the Project limits. The removed signs shall be stored above ground in a manner that will preclude damage and shall be reinstalled in their permanent locations prior to final acceptance. If any of the removed signs are not to be reinstalled, the Contractor shall notify the Engineer at the time the signs have been properly stored. Such signs will be removed from the storage area by the Contractor. Any sign that is damaged or lost because of the fault of the Contractor shall be repaired or replaced at the Contractor’s sole expense. Costs for removing, storing, protecting, and reinstalling such signs shall be included in the Fixed Price Amount of the Contract Price, and no additional compensation will be made.

(b) **Mailboxes and Newspaper Boxes:** When removal of mailboxes and newspaper boxes is made necessary by construction operations, the Contractor shall place them in temporary locations so that access to them will not be impaired. Prior to Final Acceptance, boxes shall be placed in their permanent locations and left in as good condition as when found. Boxes or their supports that are damaged through negligence on the part of the Contractor shall be replaced at his expense. The cost of removing and resetting boxes shall be included in the Fixed Price Amount of the Contract Price.

104.06—Cleanup.

Removal from the Project of rubbish, scrap material, and debris caused by the Contractor's personnel or construction operations shall be a continuing process throughout the course of the work. The work site shall have a neat and orderly appearance at all times.

Before Final Acceptance, the highway, borrow pits, quarries, disposal areas, storage areas, and all ground occupied by the Contractor in connection with the work shall be cleaned of rubbish, surplus materials, and temporary structures. All parts of the work shall be left in a neat and orderly condition.

Within 30 days after Final Acceptance, the Contractor shall remove his equipment from the right of way and property adjacent to the Project that he does not own or control.
SECTION 105--CONTROL OF WORK

105.01--Authority of Engineer.
The Engineer has the authority to suspend the work wholly or in part if the Contractor fails to correct conditions that are unsafe for workers or the general public or carry out the provisions of the Contract. The Engineer may also suspend work for such periods as set forth in the Contract Documents.

105.02—Plans and Working Drawings.
The Contractor shall furnish As-built Working Drawings and maintain a set of approved Working Drawings for the Engineer as may be required. Working drawings shall not incorporate any changes from the requirements of the Contract unless the changes are specifically denoted, together with justification, and are approved in writing by the Engineer. Working Drawings and submittals shall be identified by a complete project identification. Items or component materials shall be identified by the specific contract item number and specification reference in the Contract.

105.03--Conformity With Plans and Specifications.
Values for materials to be used in the work shall be in close conformity with the specified values or range of values specified in the Contract. Less than complete conformity may be tolerated if obtaining exact or complete conformity would not be feasible and if authorized by the Engineer.

Permissible tolerances for the elevation of earthwork and thickness of the several courses of select material, subbases, and bases are specified in these specifications. If permissive tolerances are exceeded or if consistent deviations from the Plans or abrupt changes in grade occur, even though within the tolerances, the affected areas shall be reconstructed to conform to the specified tolerance and provide a smooth riding surface. When the plans require the finished surface to tie into any structural item whose elevation is fixed, the elevation of the finished surface shall coincide with the elevation of the structural item.

105.04--Not Used.

105.05--Coordination of Plans, Standard Drawings, Specifications, and Special Provisions.
The Plans, Standard Drawings, these Specifications, Special Provisions, and supplementary documents are parts of the Contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of a discrepancy, the following will apply:

1. Calculated dimensions, unless obviously incorrect, will govern over scaled dimensions.

2. Plans will govern over these Specifications and the Standard Drawings.

3. Special Provisions will govern over these Specifications and Plans.

4. Special Provision Copied Notes will govern over Special Provisions.
105.06--Cooperation of Contractor.

The Contractor shall keep one complete set of Plans, Standard Drawings, Contract assemblies, and Specifications available on the Project at all times. The Contractor shall give the work the constant attention necessary to facilitate progress and shall cooperate with the Engineer and other contractors. If any portion of the Project is located within the limits of a municipality, military installation, or other federally owned property, the Contractor shall cooperate with the appropriate officials and agents in the prosecution of the work to the same extent as with the Department.

105.07--Cooperation With Regard to Utilities.

The adjustment of utilities consists of the relocation, removal, replacement, rearrangement, reconstruction, improvement, disconnection, connection, shifting, or altering of an existing utility facility in any manner.

The Contractor shall coordinate the Project construction with planned utility adjustments and take all necessary precautions to prevent disturbance of the utility facilities.

The Contractor shall perform Contract utility work in a manner that will cause the least reasonable inconvenience to the utility owner and those being served by the utility owner.

Existing, adjusted, or new utility facilities that are to remain within the right of way shall be properly protected by the Contractor to prevent disturbance or damage resulting from construction operations. If the Contractor desires the temporary or permanent adjustment of utilities for his own benefit, he shall conduct all negotiations with the utility owners and pay all costs in connection with the adjustment.

105.08--Cooperation Among Contractors.

Section 6.5.1 of the Design Build Contract shall govern over these provision.

The Department may at any time contract or approve concurrent contracts for performance of other work on, near, or within the same geographical area of the work specified in the Contract. Contractors shall not impede or limit access to such work by others.

When separate contracts are awarded within the limits of the Project Sections, Contractor shall not hinder the work being performed by other contractors. Contractors working in the same Project Section shall cooperate with each other. In case of dispute, the Engineer shall be the referee, and his decision shall be binding on all parties.

When contracts are awarded to separate contractors for concurrent construction in a common area, the contractors, in conference with the Engineer, shall establish a written joint schedule of operations based on the limitations of the individual contracts and the joining of the work of one contract with the others. The schedule shall set forth the approximate dates and sequences for the several items of work to be performed and shall ensure completion within the Contract Time Limit. The schedule shall be submitted to the Engineer for review and approval no later than 30 days after the award date of the later contract and prior to the first monthly progress estimate. The schedule shall be agreeable to, signed by, and binding on each contractor. The Engineer may allow modifications of the schedule when benefit to the contractors and the Department will result.
Any modification of the schedule shall be in writing, mutually agreed to and signed by the contractors, and shall be binding on the contractors in the same manner as the original agreement.

If the contractors fail to agree on a joint schedule of operations, they shall submit their individual schedules to the Engineer, who will prepare a schedule that will be binding on each contractor.

The joint schedule and any modification thereof shall become a part of each contract involved. The failure of any contractor to abide by the terms of the joint schedule shall be justification for declaring the contractor in default of his/her contract.

Each contractor shall assume all liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless the State from any and all damages and claims that may arise because of any inconvenience, delay, or loss experienced as a result of the presence and operations of other contractors working in or near the work covered by his/her contract. Each contractor shall also assume all responsibility for any of his work not completed because of the presence or operation of other contractors.

The Department will not be responsible for any inconvenience, delay, or loss experienced by the Contractor as a result of the failure of the Contractor to gain access to the work at the time contemplated, except as otherwise noted in the Contract.

The Department will not assume any responsibility for acts, failures, or omissions of one contractor that delays the work of another except as provided herein.

### 105.09--Holidays.

Work that interferes with traffic shall not be performed on Sundays or the following holidays without the permission of the Engineer: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, day after Thanksgiving and Christmas Day.

If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday.

### 105.10--Construction Stakes, Lines, and Grades.

The Contractor shall perform all construction and other surveying which the Contractor deems necessary to construct the Project in accordance with the Contract Documents. The cost for all surveying performed by the Contractor shall be included in the Fixed Price Amount of the Contract Price.

### 105.11--Not Used

### 105.12--Not Used

### 105.13--Removal of Unacceptable and Unauthorized Work.

Work that does not conform to the requirements of the Contract will be considered unacceptable work.

Unacceptable work shall be remedied or removed immediately and replaced in an acceptable manner at the Contractor's expense.
If the Contractor fails to comply immediately with any order of the QA Manager made under the provisions of this section, the QA Manager will have the authority to cause unacceptable work to be removed and replaced and unauthorized work to be removed.

105.14—Size and Weight Limitations.

(a) **Hauling or Moving Material and Equipment on Public Roads Open to Traffic:** The Contractor shall comply with legal size and weight limitations in the hauling or moving of material and equipment on public roads open to traffic unless the hauling or moving is covered by a hauling permit.

(b) **Hauling or Moving Material and Equipment on Public Roads Not Open to Traffic:** The Contractor shall comply with legal weight limitations in the hauling or moving of material and equipment on public roads that are not open to traffic unless the hauling or moving is permitted elsewhere herein or is otherwise covered by a hauling permit. The Contractor shall be liable for damage that results from the hauling or moving of material and equipment. The hauling or moving of material and equipment on the pavement structure or across any structure during various stages of construction shall be subject to additional restrictions as specified in the Plans and Specifications.

105.15—Not Used

105.16—Submission and Disposition of Claims.

Early or prior knowledge by the Department of an existing or impending claim for damages could alter the plans, scheduling, or other action of the Department or result in mitigation or elimination of the effect of the act objected to by the Contractor. Therefore, a written statement describing the act of omission or commission by the Department or its agents that allegedly caused damage to the Contractor and the nature of the claimed damage shall be submitted to the Engineer in accordance with the provisions of the Contract. If such damage is deemed certain in the opinion of the Contractor to result from his acting on an order from the Engineer, he shall immediately take written exception to the order. Submission of a notice of claim as specified shall be mandatory. Failure to submit such notice shall be a conclusive waiver to such claim for damages by the Contractor in accordance with the terms of the Contract. An oral notice or statement will not be sufficient nor will a notice or statement after the event.

At the time of occurrence or prior to beginning the work, the Contractor shall furnish the Engineer an itemized list of materials, equipment, and labor for which additional compensation will be claimed. Only actual cost for materials, labor, and equipment will be considered. The Contractor shall afford the Engineer every facility for keeping an actual cost record of the work. The Contractor and the Engineer shall compare records and bring them into agreement at the end of each day. Failure on the part of the Contractor to afford the Engineer proper facilities for keeping a record of actual costs will constitute a waiver of a claim for such extra compensation except to the extent that it is substantiated by the Department’s records. The filing of such notice by the Contractor and the keeping of cost records by the Engineer shall in no way establish the validity of a claim.

If the Contractor’s claim contains data furnished by the Contractor that cannot be verified by the Department’s records, the data shall be subject to a complete audit by the Department or its authorized representative if they are to be used as a basis for claim settlement.
Upon completion of the Contract, the Contractor may, within 60 days from the time of Final Acceptance, submit to the Department a written claim, an original and three legible copies, for the amount he deems he is entitled to under the Contract. The claim shall set forth the facts upon which the claim is based. The Contractor shall include all pertinent data and correspondence that may substantiate the claim. Only actual cost for materials, labor, and equipment will be considered. Within 90 days from the receipt of the claim, the Department will make an investigation and notify the Contractor by registered mail of its decision. However, by mutual agreement, the Department and Contractor may extend the 90-day period for another 30 days.

If the Contractor is dissatisfied with the decision, he shall notify the Commissioner in writing within 30 days from receipt of the Department’s decision that he desires to appear before him, whether in person or through counsel, and present additional facts and arguments in support of his claim. The Commissioner will schedule and meet with the Contractor within 30 days after receiving the request. However, the Commissioner and Contractor, by mutual agreement, may schedule the meeting to be held after 30 days but before the 60th day from the receipt of the Contractor’s written request. Within 45 days from the date of the meeting, the Commissioner will investigate the claim, including the additional facts presented, and notify the Contractor in writing of his decision. However, the Commissioner and Contractor, by mutual agreement, may extend the 45-day period for another 30 days. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with the Contractor subject to the provisions of Section 2.1-127 of the Code of Virginia 1950 as amended. No suit or action shall be brought against the Department by the Contractor or any persons claiming under him or on behalf of a subcontractor of the Contractor or a person furnishing materials for the Contract to the Contractor, arising from the performance of the Contract by the Contractor, subcontractor or person furnishing materials to the Contractor, unless such claimant shall have exhausted the review process provided above. Further, no such action shall be brought unless the same shall be brought within twelve months from receipt of the decision of the Commissioner of the Department. In no event shall any delay therein on the part of the Contractor, subcontractor or person furnishing materials be construed as a reason for extending the time within which such suit or action must be brought. Any such case brought on behalf of a subcontractor or person furnishing materials to the Contractor shall only be brought for costs and expenses caused by the acts or omissions of the Department and shall not be brought for costs and expenses caused by the Contractor.

Any moneys that become payable as the result of claim settlement after payment of the final estimate will not be subject to payment of interest unless such payment is specified as a condition of the claim settlement.

SECTION 106—CONTROL OF MATERIAL

106.01—Source of Supply and Quality Requirements.

The materials used throughout the work shall conform to the requirements of the Contract. The Contractor shall regulate his supplies so that there will be a sufficient quantity of tested material on hand at all times to prevent any delay of work. Except as otherwise specified, materials, equipment, and components shall be new.

At the option of the QA Manager, materials may be approved at the source of supply. If it is found during the life of the Contract that previously approved sources of supply do not supply materials or equipment conforming to the requirements of the Contract, do not furnish the valid test data required to document the
quality of the material or equipment, or do not furnish valid quantities to document payment, the Contractor shall change the source of supply and furnish material or equipment from other approved sources. The Contractor shall notify the QA Manager of this change, and provide the same identifying information noted hereinbefore, at least 60 days prior to their use on the Project, but not less than two weeks prior to delivery.

Materials shall not be furnished from a source that has been identified by the Office of Federal Activities as being on the EPA's list of violating facilities.

Equipment and material guaranties or warranties that are normally given by a manufacturer or supplier, or are otherwise required in the Contract, shall be obtained by the Contractor and assigned to the State in writing.

106.02—Not Used

106.03—Local Material Sources (Pits and Quarries).

Local material sources shall be concealed from view from the completed roadway and any existing public roadway. Concealment shall be accomplished by selectively locating the pit or quarry and spoil pile, providing environmentally compatible screening between the pit or quarry site and the roadway, or using the site for another purpose after removal of the material. The foregoing requirements shall also apply to any pit or quarry opened or reopened by a subcontractor or supplier. However, the requirements will not apply to commercial sand and gravel and quarry operations actively processing material at the site prior to the date of the execution of the Contract.

The Contractor shall obtain a statement signed by the property owner in which the property owner agrees to the use of his property as a source of material for the Project. Upon completion of the use of the property as a material source, the Contractor shall obtain a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement does not apply to commercial sources or sources owned by the Contractor.

The Contractor's design and restoration shall be in accordance with the Contract and in accordance with the requirements of the federal, state, and local laws and regulations.

Topsoil on borrow sites shall be stripped and stockpiled for use as needed within the construction limits of the Project or in the reclamation of borrow and disposal areas.

If the Contractor fails to provide necessary controls to prevent erosion and siltation, such efforts are not made in accordance with the approved sequence, or the efforts are found to be inadequate, he shall take immediate action to abate erosion and siltation. The Engineer may cause the Contractor to cease all contributing operations and direct efforts toward corrective action or may perform the work with state forces or other means determined by the Engineer. If the work is not performed by the Contractor, the cost of performing the work, plus 25 percent for supervisory and administrative personnel, will be deducted from moneys due the Contractor.

Costs for applying seed, fertilizer, lime, and mulch; restoration; drainage; erosion and siltation control; regrading; haul roads; and screening shall be included in the Fixed Price Amount of the Contract Price.

If the Contractor fails to fulfill the provisions of the approved plan for screening or restoring material sources, the Department may withhold and use for the purpose of performing such work any moneys due the Contractor. The Contractor will be held liable for penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation.
After removing the material, the Contractor shall remove metal, lumber, and other debris resulting from his operations and shall shape and landscape the area in accordance with the approved plan for such work.

If payment is to be made for material measured in its original position, material shall not be removed until cross sections have been taken. The material shall be reserved exclusively for use on the Project until completion of the Project or until final cross sections have been taken.

106.04--Disposal Areas.

Unsuitable or surplus material whose presence is shown on the Plans shall be deposited on approved areas located off the right of way. The Contractor shall obtain the necessary rights to such property provided at least one property owner having a suitable location is willing to enter a reasonable agreement.

The Contractor shall obtain a statement signed by the property owner in which the owner agrees to the use of his property for the deposit of material from the Project. Upon completion of the use of the property as a disposal area, the Contractor shall obtain a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement will be waived for property that is owned by the Contractor or the Department or for which rights have been procured by the Department.

Prior to opening a disposal area, the Contractor shall submit a site plan for the approval of the Engineer. The plan shall show (1) the location and approximate boundaries of the disposal area; (2) all procedures to minimize erosion and siltation; (3) haul roads; (4) provision for environmentally compatible screening; (5) restoration of and cover vegetation for the area following the deposit of material; (6) the drainage pattern on and away from the area affected, including constructed or natural waterways used for drainage; (7) the streams or tributaries receiving the discharge; and (8) a sequence and schedule to complete the work. The site plan shall also include sediment basins if required. Sediment basins are required if the runoff from a watershed area of 3 acres or more flows across a disturbed area of 10,000 square feet or greater. The Contractor shall design, construct and maintain the basin to accommodate the anticipated sediment loading from the land disturbing activity. The Contractor shall certify that the sediment basin design is in compliance with the Virginia Erosion and Sediment Control Regulations.

Disposal areas shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and haul roads thereto. After the material has been deposited, the area shall be shaped to minimize erosion and siltation of nearby streams and landscaped in accordance with the approved plan for such work.

Excavated rock in excess of that used in embankments in accordance with the requirements of Section 303 shall be deposited off the right of way in an approved disposal area. Deposits whose surface is composed largely of rock shall be leveled by special arrangement of the material or reduction of the irregularity of the surface by crushing projections to create a reasonably uniform and neat appearance.

The Contractor's design and restoration shall be in accordance with the requirements of the Contract and federal, state, and local laws and regulations.

If the Contractor fails to provide the necessary controls to prevent erosion and siltation, such efforts are not made in accordance with the approved sequence, or the efforts are found to be inadequate, the Contractor shall take immediate action to abate erosion and siltation. The QA Manager shall cause the Contractor to cease all contributing operations and direct efforts toward corrective action. If the work is not performed by
the Contractor, the Department may perform the work and in such event the Contractor shall reimburse the Department for the entire cost of performing the work, plus 25 percent for supervisory and administrative personnel.

Costs for applying seed, lime, fertilizer, and mulch; reforestation; drainage; erosion and siltation control; regrading; haul roads; and screening shall be included in the Fixed Price Amount of the Contract Price.

If the Contractor fails to fulfill the provisions of the approved plan for screening or restoring disposal areas, the Department may withhold and use for the purpose of performing such work any moneys due the Contractor. The Contractor shall be held liable for all penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation.

106.05--Rights for and Use of Materials Found on Project.
The Contractor may use in the Project any materials found in the excavation that comply with the specifications. The Contractor shall replace at his own expense with other acceptable material the excavation material removed and used for embankments, backfills, approaches, or otherwise.

106.06--Not Used
106.07--Not Used
106.08--Not Used
106.09--Not Used
106.10--Not Used
106.11--Not Used.

SECTION 107--LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01--Laws To Be Observed

The Contractor shall keep fully informed of federal, state, and local laws, bylaws, ordinances, orders, decrees, and regulations of governing bodies, courts, and agencies having any jurisdiction or authority that affects those engaged or employed on the work, the conduct of the work, or the execution of any documents in connection with the work. The Contractor shall observe and comply with such laws, ordinances, regulations, orders, or decrees and shall indemnify and hold harmless the State and its agents, officers, or employees against any claim for liability arising from or based on their violation, whether by himself, his agents, his employees, or subcontractors. The Contractor shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation affecting the Contract or prosecution of the work thereunder. The Contractor shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any state or federal agency charged with enforcement of such law.

107.02--Not Used.
107.03—Not Used.

107.04—Restoration of Work Performed by Others.

The Department may construct or reconstruct any utility service in the highway or street or grant a permit for the same at any time. The Contractor shall be entitled to any damages to the extent provided by Article 19.

When authorized by the Engineer, the Contractor shall allow any person, firm, or corporation to make an opening in the highway within the limits of the Project upon presentation of a duly executed permit from the Department or any municipality for sections within its corporate limits.

107.05—Federal-Aid Provisions.

On the section(s) where the U.S. government pays all or any portion of the cost of the Project, the Contractor shall observe the federal laws and rules and regulations made pursuant to such laws. The work shall be subject to inspection by the appropriate federal agency.

Such inspection shall in no sense make the federal government a party of the Contract and will in no way interfere with the rights of either party.

107.06—Sanitary Provisions.

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of employees as may be necessary to comply with the requirements of the state and local Board of Health or other bodies or tribunals having jurisdiction.

107.07—Public Convenience and Safety.

The Contractor shall conduct his work so as to ensure the least possible obstruction to traffic. The Contractor shall provide for the safety and convenience of the general public and residents along the highway and the protection of persons and property as specified in Section 104.04.


The Contractor shall coordinate all railway work with the appropriate railway company. The Contractor is responsible for complying with all railway requirements, including fees, insurance, permits, and flagmen.

107.09—Construction Over or Adjacent to Navigable Waters.

The Contractor shall conduct the work on navigable waters so as to ensure the least possible obstruction to navigation and that the existing navigable depths will not be impaired except as may be allowed by a permit issued by the U.S. Coast Guard. The Contractor shall also provide and maintain temporary navigation lights.
and signals required by U.S. Coast Guard regulations for the protection of navigation. When the Contractor determines that the work has reached a point where such action may be taken, the channel(s) through the structure shall be promptly cleared of falsework, piling, or other obstructions placed therein or caused by the construction of the structure to the satisfaction of the Coast Guard.

107.10--Barricades and Warning Signs.

The Contractor shall take all necessary precautions for the protection of the work and the safety of the public as described herein and in Sections 104.04, 107.07, and 512.

Highways closed to traffic shall be protected by barricades and other warning devices. Barricades and warning devices shall be illuminated where required during darkness and low visibility. The Contractor shall erect warning devices in advance of a location on the Project where operations or obstructions may interfere with the use of the road by traffic and at all intermediate points where the new work crosses or coincides with an existing roadway. The Contractor shall maintain sign faces and reflective surfaces of warning devices in a clean and visible condition. Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to the requirements of the MUTCD. The reflective surface of signs and safety devices furnished by the Contractor shall be fabricated using encapsulated lens reflective sheeting conforming to the requirements of Section 701.

107.11--Use of Explosives.

The Contractor shall be responsible for damage resulting from the use of explosives. Explosives shall be stored in a secure manner in compliance with federal, state, and local laws and ordinances.

The Contractor shall notify each property and utility owner having a building, structure, or other installation above or below ground in proximity to the site of the work of his intention to use explosives. Notice shall be given sufficiently in advance to enable the owners to take steps to protect their property. Notice shall not relieve the Contractor of responsibility for damage resulting from his blasting operations.

107.12--Protecting and Restoring Property and Landscape.

The Contractor shall preserve property and improvements along the lines of and adjacent to the work unless their removal or destruction is called for by the Plans. The Contractor shall use suitable precautions to prevent damage to such property.

When the Contractor finds it necessary to enter on private property, he shall secure from the owner or lessee written permission for such entry prior to moving thereon. An executed copy of this written permission shall be retained by the Contractor.

The Contractor shall be responsible for damage or injury to property during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the method of executing the work or attributable to defective work or materials. This responsibility shall not be released until Final Acceptance of the Project.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the method of executing the work or in consequence of the nonexecution thereof on the part of the Contractor, the Contractor shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, or making settlement with the property owner.
The Contractor shall secure from the owner a release from any claim against the Department without additional compensation therefor. A copy of this release shall be retained by the Contractor.

107.13--Not Used

107.14--Environmental Stipulations.

The Contractor hereby represents (1) that any facility to be used in the performance of the Contract (unless the Contract is exempt under the Clean Air Act as amended [42 U.S.C. 1857, et seq., as amended by P.L. 91-604], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq. as amended by P.L. 92-500], and Executive Order 11738 and regulations in implementation thereof [40 C.F.R., Part 15]) is not listed on the EPA's List of Violating Facilities pursuant to 40 C.F.R. 15.20; and (2) that the Department will be promptly notified prior to the award of the Contract if the Contractor receives any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the work or precautions described herein except where provided for in the Contract or except where provision has been made for such payment in the Plans and Specifications.

(a) **Erosion and Siltation:** The Contractor shall exercise every reasonable precaution, including temporary and permanent measures, throughout the duration of the Project to control erosion and prevent or minimize siltation of rivers, streams, lakes, and impoundments. Siltation control measures shall be applied to erodible material exposed by any activity associated with construction, including local material sources, stockpiles, disposal areas, and haul roads.

Temporary measures shall be coordinated with Contract Work to the extent practicable to ensure economical, effective, and continuous erosion and siltation control. Permanent erosion control measures and drainage facilities shall be installed as the work progresses.

The Contractor shall inspect erosion and siltation control devices and measures for deficiencies immediately after each 1" of daily rainfall and at least daily during prolonged rainfall. Deficiencies shall be corrected immediately. Failure on the part of the Contractor to maintain erosion and siltation control devices in a functioning condition shall result in the QA Manager notifying the Contractor in writing of specific deficiencies. If the Contractor fails to correct or take appropriate actions to remedy the specified deficiencies within 24 hours after receipt of such notification, the QA Manager shall require the Contractor to discontinue work in other areas and concentrate efforts toward rectifying the specified deficiencies. If the work is not performed by the Contractor, the Department may perform the work and in such event the Contractor shall reimburse the Department the entire cost of performing the work, plus 25 percent for supervisory and administrative personnel.

(b) **Pollution:**

1. **Water:** The Contractor shall exercise every reasonable precaution throughout the duration of the Project to prevent pollution of rivers, streams, and impoundments. Pollutants such as chemicals, fuels, lubricants, bitumens, raw sewage, paints,
sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into channels leading to them.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into state waters. During specified spawning seasons, discharges and construction activities in spawning areas of state waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluent shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved nonerodible materials and shall be removed by the Contractor to natural ground in accordance with the requirements of the Contract Documents...

If the Contractor dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional state and federal agencies in accordance with the requirements of the Contract and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

Excavation material shall be disposed of in approved areas above the mean high water mark shown on the plans in a manner that will prevent the return of solid or suspended materials to state waters. If the mark is not shown on the plans, the mean high water mark shall be considered the elevation of the top of stream banks.

Constructing new bridge(s) and dismantling and removing existing bridge(s) shall be accomplished in a manner that will prevent the dumping or discharge of construction or disposable materials into rivers, streams, or impoundments.

Construction operations in rivers, streams, or impoundments shall be restricted to those areas where channel changes are shown on the plans and to those that must be entered for the construction of structures. Rivers, streams, and impoundments shall be cleared of falsework, piling, debris, or other obstructions placed therein or caused by construction operations.

The Contractor shall prevent stream constriction that would reduce stream flows below the minimum, as defined by the State Water Control Board, during construction operations.

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Contractor shall design and provide temporary channels or culverts of adequate size to carry the normal flow of the stream or drainage facility. The Contractor shall submit a temporary relocation design to the QA Manager for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Fixed Price Amount of the Contract Price.
Temporary bridges or other structures shall be used wherever an appreciable number of stream crossings will be made.

2. **Air:** The Contractor shall comply with the provisions of the Contract and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein.

   Burning shall be performed in accordance with all applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of materials does not destroy or damage property or cause excessive air pollution. The Contractor shall not burn rubber tires, asphalt, used crankcase oil, or other materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

   Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the Rules of the State Air Pollution Control Board.

   Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos.

3. **Noise:** Contractor shall comply with all local noise ordinances.

   Equipment shall in no way be altered so as to result in noise levels that are greater than those produced by the original equipment.

   When feasible, the Contractor shall establish haul routes that direct his vehicles away from developed areas and ensure that noise from hauling operations is kept to a minimum.

   These requirements are not applicable if the noise produced by sources other than the Contractor's operation at the point of reception is greater than the noise from the Contractor's operation at the same point.

   (c) **Forests:** The Contractor shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by the Project as a result of such operations. The Contractor shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Contractor upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Contractor shall negotiate with the proper forest official for compensation for such labor, tools, or equipment.
(d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of work, the Contractor shall act immediately to suspend work at the site of the discovery and notify the proper state authority charged with the responsibility of investigating and evaluating such finds. The Contractor shall cooperate and assist in protecting, mapping, and removing the findings. Findings shall become the property of the State unless they are located on federal lands, in which event they shall become the property of the U.S. government.

107.15—Opening Partial Sections of Projects to Traffic.

When specified in the Contract or when directed by the Engineer, certain partial sections of the work may be opened to traffic. Such opening shall not constitute Final Acceptance of the work or any part thereof or a waiver of any provision of the Contract.

On any partial section of the work opened by order of the Engineer where the Contract does not provide for traffic to be carried through the work and the Contractor has not been dilatory in prosecuting the work, the Contractor will not be required to assume any expense entailed in maintaining the road for traffic. Such expense will be borne by the Department or will be compensated for in accordance with the requirements of the Contract. Repair of slides and repair of damage attributable to traffic will be compensated for in accordance with the requirements of the Contract. The cost of all other repairs shall be borne by the Contractor. Slides shall be removed by the Contractor in accordance with the terms of the Contract and the Warranty.

On any section of the work opened by order of the Engineer where the Contract does not provide for traffic to be carried through the work, any additional cost for the completion of other items of work that are occasioned because of the changed working conditions will be compensated in accordance with the requirements of the Contract.

If the Contractor is dilatory in completing the work, he shall not be relieved of the responsibility for maintenance during the period the section is opened to traffic prior to Final Acceptance. Any expense resulting from the opening of such portions under these circumstances, except slides, shall be borne by the Contractor. The Contractor shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

107.16—Contractor's Responsibility for Work.

Until Final Acceptance of each section of the work by the Engineer in accordance with the requirements of the Contract, the Contractor shall have charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements or from any other cause. The Contractor shall rebuild, repair, restore, and make good damage to any portion of the work occasioned by any of the foregoing causes before Final Acceptance and shall bear the expense thereof.

In case of suspension of work, the Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the work, provide for erosion control and drainage, and erect any necessary temporary structures, signs, or other facilities at no additional cost to the Department. During the suspension of work, the Contractor shall properly and continuously maintain in an acceptable
growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract and shall take adequate precautions to protect new tree growth and other important vegetation against damage.


At points where the Contractor's operations are adjacent to the properties of any utility, including railroads, and damage to which might result in considerable expense, loss, or inconvenience, work shall not commence until arrangements necessary for the protection thereof have been completed.

The Contractor shall cooperate with owners of utility lines so that removal and adjustment operations may progress in a reasonable manner, duplication of adjustment work may be reduced to a minimum, and services rendered by those parties will not be unnecessarily interrupted.

If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. When the Contractor's work operations require the disconnection of "in service" fire hydrants, the Contractor shall notify the locality's fire department or communication center at least 24 hours prior to disconnection. In addition, the Contractor shall notify the locality's fire department or communications center no later than 24 hours after reconnection of such hydrants. The Contractor shall be responsible for any damage to utilities that are attributable to his neglect or methods of performing the work.

Nothing in this section shall be construed to be in conflict with Section 107.12.

107.18—Not Used.

107.19—Personal Liability of Public Officials.

In carrying out any of the provisions of these specifications or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Board, Commissioner, Engineer, or their authorized representatives, either personally or as officials of the State. In all such matters, they act solely as agents and representatives of the State.

107.20—No Waiver of Legal Rights.

The State shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after Final Acceptance of the work and payment therefor from showing (1) the true amount and character of the work performed and materials furnished by the Contractor, (2) that any such measurement, estimate, or certificate is untrue or incorrectly made, or (3) that the work or materials do not conform with the provisions of the Contract. The State shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Contractor or his surety, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Department or any representative of the Department nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department shall operate as a waiver of any portion of the Contract or of any power
herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

SECTION 108–PROSECUTION AND PROGRESS OF WORK

108.01–Not Used.

108.02–Not Used.

108.03–Prosecution of Work.

Work shall be conducted in such a manner and with sufficient materials, equipment, tools, and labor as are necessary to ensure its completion in accordance with the Plans and these Specifications within the time limit specified in the Contract and these Specifications. Once the Contractor has begun work, it shall be prosecuted continuously and to the fullest extent possible except for interruptions caused by weather or delays authorized or ordered by the Engineer. If approval is given to discontinue the work temporarily, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

108.04–Not Used.

108.05–Limitation of Operations.

The Contractor shall conduct the work in a manner and sequence that will ensure its expeditious completion with the least interference to traffic and shall have due regard for the location of detours and provisions for handling traffic. The Contractor shall not open any work to the prejudice or detriment of work already started. The Engineer may require the Contractor to finish a partial section of work before work is started on any other section.

108.06–Gratuities.

Gifts, gratuities, or favors shall not be given or offered by the Contractor or its members to personnel of the Department. A gift, gratuity, or favor of any nature whatsoever or offer of such by the Contractor shall be a violation of this provision.

The Contractor shall not employ any personnel of the Department for any services without the prior written consent of the Engineer.

If the Engineer determines that the Contractor or the Contractor's employees, representatives, or agents of any person acting in his behalf have violated this provision, the Contractor and/or its members may, at the discretion of the Engineer, be disqualified from bidding on future contracts with the Department. Any implicated employees, agents, or representatives of the Contractor and/or its members may be prohibited from working on any contract awarded by the Department. The decision of the Engineer shall be binding on all parties. A Contractor so disqualified may be reinstated only by petition to and approval by the Engineer.

108.07–Character of Workers.
Any person employed by the Contractor or any subcontractor who, in the opinion of the Engineer, does not
perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of
the Engineer, be removed forthwith by the Contractor or subcontractor employing the person and shall not be
employed again on any portion of the work without the approval of the Engineer. If the Contractor fails to
remove the person or furnish suitable and sufficient personnel for proper prosecution of the work, the
Engineer may withhold all moneys that are or may become due the Contractor and may suspend the work
until the Contractor has complied with the request or order.

108.08--Not Used.

108.09--Not Used.

108.10--Not Used.

108.11--Not Used.

108.12--Not Used.

108.13--Not Used.

108.14--Not Used

108.15--Not Used.

SECTION 109--MEASUREMENT AND PAYMENT

109.01--Measurement of Quantities.

*The following section applies only with respect to unit-priced Work*

Work specified in the Contract will be measured according to U.S. Standard Measures. The methods of
measurement and computations to be used to determine quantities of material furnished and work performed
will be those generally recognized as conforming to good engineering practice.

Longitudinal measurements for surface computations will be made horizontally, and transverse
measurements will be the surface measure shown on the Plans. Individual utility encroachment areas of 9
square feet or less will not be deducted from surface areas measured for payment.

Structures will be measured according to neat lines shown on the plans.

Items that are measured by the linear foot will be measured parallel to the base or foundation upon which
they are placed.

Allowance will not be made for surfaces placed over a greater area than shown on the plans or for any
material moved from outside the area of the cross section and lines shown on the plans.
When standard manufactured items are specified and are identified by weights or dimensions, such identification will be considered nominal. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

(a) **Measurement by Weight:** Materials that are measured or proportioned by weight shall be weighed on accurate scales. When material is paid for on a tonnage basis, personnel performing the weighing shall be certified by the Engineer and shall be bonded to the Commonwealth of Virginia in the amount of $10,000 for the faithful observance and performance of the duties of the weighperson required herein. The bond shall be executed on a form having the exact wording as the Weighpersons Surety Bond Form furnished by the Department and shall be submitted to the Department prior to the furnishing of the tonnage material. No payment will be made for materials delivered in excess of the legal load limits established for each truck.

The Contractor shall have the weighperson perform the following:

1. Post and furnish a weekly tare mass of each truck used and keep a record of them for 12 months.

2. Furnish a signed shipping ticket for each load that shows the date, truck number, load number, plant name, size and type of material, project, schedule or purchase order number, and the masses specified herein.

3. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of material, by contract, can be readily identified.

4. Submit by the end of the next working day a summary of the number of loads and total masses for each type of material by contract.

Trucks used to haul material being paid for by weight shall display the truck uniform identification number and legal gross and legal net weight limits. These markings shall be no less than 2 inches high and permanently stenciled on each side of the truck with contrasting color and located as to be clearly visible when the vehicle is positioned on the scales and observed from normal position of the weighperson at the scale house.

Trucks used to haul material shall be equipped with a cover suitable to protect the material and to protect the traveling public.

The truck tare to be used in the weighing operation shall be the weight of the empty truck determined with full tank(s) of fuel and the operator seated in the cab. The tare weight of trucks shall be recorded to the nearest 20 pounds. At the option of the Contractor, a new tare may be determined for each load. When a new tare is obtained for each load, the requirement for full tank(s) of fuel will be waived.

Net rail shipment weights may be used for pay quantities when evidenced by railroad bills of lading. However, such weights will not be accepted for pay quantities of materials that subsequently pass through a stationary mixing plant.
Scales shall conform to the requirements for accuracy and sensitivity as set forth by the National Institute of Standards and Technology Handbook No. 44 for Specification Tolerances and Requirements for Commercial and Weighing Devices. Scales used in the weighing of materials paid for on a tonnage basis shall be approved and sealed in accordance with the requirements of the policies of the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services, or other approved agencies, at least once every six months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six months. Hopper scales shall be checked with a minimum 500 pounds of test weights and truck scales shall be checked with a minimum 20,000 pounds of test weights.

Copies of scale test reports shall be maintained on file at the scale location for at least 18 months, and copies of all scale service representative test reports shall be maintained by the QA Manager.

The quantity of materials paid for on a tonnage basis shall be determined on scales equipped with an automatic printer. Truck scale printers shall print the net weight and either the gross or tare weight of each load. Hopper scale printers shall conform to the requirements of Section 211.11 and shall print the net weight of each load. The shipping ticket shall also show the legal gross weight for material weighed on truck scales and the legal net weight for material weighed on hopper scales.

If the automatic printer becomes inoperative, the weighing operation may continue for 48 hours provided satisfactory visual verification of weights can be made. The written permission of the Engineer will be required for the operation of scales after 48 hours.

If significant discrepancies are discovered in the printed weight, the ultimate weight for payment will be calculated on volume measurements of the materials in place and unit weights determined by the QA Manager or by other methods deemed appropriate to protect the interests of the State.

**Measurement by Cubic Yard:** Material that is measured by the cubic yard, loose measurement or vehicular measurement, shall be hauled in approved vehicles and measured therein at the point of delivery. Material measured in vehicles, except stream bed gravel, will be allowed at the rate of 2/3 the volume of the vehicle. The full volume of the vehicle will be allowed for stream bed gravel. Such vehicles may be of any size or type acceptable to the QA Manager provided the body is of such shape that the actual contents can be readily and accurately determined. Unless all approved vehicles are of uniform capacity, each vehicle shall bear a plainly legible identification mark indicating the specific approved capacity. Each vehicle shall be loaded to at least its water level capacity.

When approved by the Engineer in writing, material specified to be measured by the cubic yard may be weighed and such weights converted to cubic yards for payment purposes. Factors for conversion from weight to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before they are used.

**Measurement by Lump Sum:** When used as an item of payment, the term *lump sum* will mean full payment for completion of work described in the Contract. When a complete structure or structural unit (in effect, lump sum work) is specified as the unit of
measurement, the unit will be construed to include necessary fittings and accessories. The quantities may be shown on the plans for items for which lump sum is the method of measurement. If shown, the quantities are approximate and are shown for estimating purposes only. Items that are to be measured as complete units will be counted by the Contractor.

(d) Specific Items:

1. **Concrete:** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their volumes.

2. **Excavation, Embankment, and Borrow:** In computing volumes of excavation, embankment, and borrow, methods having general acceptance in the engineering profession will be used. When the measurement is based on the cross-sectional area, the average end area method will be used.

3. **Asphalt:** Asphalt will be measured by the liter, volumetric measurement, based on a temperature of 60°F using the following correction factors:
   
   a. 0.00035 per degree Fahrenheit for petroleum oils having a specific gravity 60/60°F above 0.966
   
   b. 0.00040 per degree Fahrenheit for petroleum oils having a specific gravity 60/60°F between 0.850 and 0.966
   
   c. 0.00025 per degree Fahrenheit for emulsified asphalt

   Unless volume correction tables are available, the following formula shall be used in computing the volume of asphalt at temperatures other than 60°F:

   \[ V^d = \frac{V}{K(T - 60)} + 1 \]

   where \( V \) = volume of asphalt to be corrected; \( V^d \) = volume of asphalt at 60°F; \( K \) = correction factor (coefficient of expansion); and \( T \) = temperature in degrees Fahrenheit of asphalt to be corrected.

   When asphalt is delivered by weight, the volume at 60°F will be determined by dividing the net weight by the weight per gallon at 60°F.

   When specified in the Contract, asphalt will be measured by weight. Net certified scale weights, or weights based on certified volumes in the case of rail shipments, will be used as a basis of measurement, subject to correction when asphalt has been lost from the car or the distributor, disposed of, or otherwise not incorporated in the work.

   When asphalt is shipped by truck or transport, net certified weights or volumes subjected to correction for loss or foaming may be used to compute quantities.

   Only the quantity of asphalt actually placed in the work and accepted will be considered in determining the amount due the Contractor.
4. **Timber**: Timber will be measured in cubic yards actually incorporated in the structure. Measurement will be based on nominal widths and thickness and the extreme length of each piece.

5. **Equipment Rental**: Equipment rental will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the Project or source of supply and the Project except when another method of measurement is specified.

109.02--Not Used

109.03--Not Used

109.04--Not Used

109.05--Not Used

109.06--Not Used

109.07--Not Used

109.08--Not Used

109.09--Not Used

**SECTION 110--MISCELLANEOUS PROVISIONS**

110.01--Not Used

110.02--Labor and Wages.

The Contractor shall comply with the provisions and requirements of the State's workers' compensation law and public statutes that regulate hours of employment on public work. On all Federally funded portions of the Project, the Contractor shall comply with all applicable Federal requirements. Job orders placed with a State Employment Service shall indicate that employment preference will be given to veterans referred for employment. Advertisements in newspapers or other publications for Project employees shall include the notation "Employment Preference to Veterans."

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 Contract, shall be expressly made a part of this Contract. The Contractor and his agents shall promptly comply with all such applicable provisions.
110.03--Equal Employment Opportunity.

Refer to Appendix 7 to the Design Build Contract for Equal Employment Opportunity provisions.

110.04--Not Used

110.05--Construction Safety and Health Standards.

It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to the Contract, that the Contractor and any subcontractor shall not require any worker employed in performance of the Contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor in accordance with the requirements of Section 107 of the Contract Work Hours and Safety Standards Act.

The Contractor shall comply with the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the Code of Virginia and the duties imposed under Section 40.1-51.1 of the Code. Any violation of the requirements or duties that is brought to the attention of the Contractor by the Engineer or any other person shall be immediately abated.


Contractor 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 contract 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 will protect posters from weather or damage. The Contractor shall promptly post official notices on the bulletin boards. The costs for such work shall be included in the Contract Price.

110.07--Certification of Nonsegregated Facilities.

The Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities for highway construction contracts exceeding $10,000 that are not exempt from the provisions of the equal opportunity clause, requires that bidders neither maintain nor provide facilities for employment that are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. If the Contract exceeds $10,000 and is not exempt from the provisions of the equal opportunity clause, the Contractor will be deemed to have signed and agreed to the provisions of the certification. If the Contract exceeds $10,000 and is not exempt from the provisions of the equal opportunity clause, the Contractor shall forward the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed $10,000 and are not exempt from the provisions of the equal opportunity clause:

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES
1. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds $10,000 and is not exempt from the provisions of the equal opportunity clause. This certification provides that the subcontractor or material supplier does not maintain, or provide for his employees, facilities that are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

2. Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding $10,000, which are not exempt from the provisions of the equal opportunity clause, will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed $10,000 and are not exempt from the provisions of the equal opportunity clause.
### APPENDIX 10

**FEDERAL REQUIREMENTS**

<table>
<thead>
<tr>
<th>Appendix Description</th>
<th>No. of Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment 1 Federal Provisions</td>
<td>2</td>
</tr>
<tr>
<td>Attachment 2 FHWA Form 1273</td>
<td>30</td>
</tr>
<tr>
<td>Attachment 2A Appalachian Provisions</td>
<td>2</td>
</tr>
<tr>
<td>Attachment 3 Wage Determination of the Secretary of Labor</td>
<td>1</td>
</tr>
<tr>
<td>Attachment 4 Equal Employment Opportunity</td>
<td>6</td>
</tr>
<tr>
<td>Attachment 5 Affirmative Action</td>
<td>7</td>
</tr>
<tr>
<td>Attachment 6 Certifications (Forms)</td>
<td>7</td>
</tr>
<tr>
<td>Form A Non-Collision Affidavit</td>
<td></td>
</tr>
<tr>
<td>Form B Buy America Certification</td>
<td></td>
</tr>
<tr>
<td>Form C Debarment</td>
<td></td>
</tr>
<tr>
<td>Form D Lobbying</td>
<td></td>
</tr>
<tr>
<td>Form E EEO Certification</td>
<td></td>
</tr>
</tbody>
</table>
ATTACHMENT 1
FEDERAL PROVISIONS

1. **General.** The Work will be financed in whole or in part with Federal funds, and the Contractor shall observe the federal laws, rules and regulations applicable to projects which are so funded, including the requirements set forth in this Appendix 10 and all attachments hereto.

2. **Federal Aid Participation.** The Work shall be subject to the inspection of the proper officials of the United States Government. Inspections made by authorized Federal representatives shall not make the United States Government a party to this Contract and will not interfere with the rights of the Contract parties.

3. **FHWA Buy America Requirements.**
   
a. FHWA Federal-aid projects are subject to 23 CFR § 635.410, Buy America requirements.

   b. Contractor shall use only domestic steel and iron. 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 which 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 the cost of such materials does not exceed 0.1% of the Contract Price.

4. **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 facility 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 facility for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

5. **Performance of Previous Contract.**

   In addition to the provisions in Section II, “Nondiscrimination,” and Section VII, “Subletting or Assigning the Contract,” of the required contract provisions
contained in FHWA Form 1273 (Attachment 2 to this Appendix 10), the Contractor shall comply with the following:

The Contractor has executed the “Certification of Compliance with EEO Clause Requirements” located in Appendix 10, Attachment 6. No request for subcontracting any portion of the Contract in excess of $10,000 will be considered under Section VII of the required contract provisions contained in FHWA Form 1273 unless such request is accompanied by the form of Certification referred to above, executed by the proposed subcontractor.
# TABLE OF CONTENTS

## I. GENERAL  
6

## II. NONDISCRIMINATION  
7

1. Equal Employment Opportunity  
   7
2. EEO Officer  
   7
3. Dissemination of Policy  
   8
4. Recruitment  
   8
5. Personnel Actions  
   9
6. Training and Promotion  
   9
7. Unions  
   10
8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment  
   11
9. Records and Reports  
   11

## III. NONSEGREGATED FACILITIES  
12

## IV. PAYMENT OF PREDETERMINED MINIMUM WAGE  
13

1. General  
   14
2. Classification  
   14
3. Payment of Fringe Benefits  
   16
4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers  
   16
5. Apprentices and Trainees (Programs of the U.S. DOT)  
   19
6. Withholding  
   19
7. Overtime Requirements  
   19
8. Violation  
   20
9. Withholding for Unpaid Wages and Liquidated Damages  
   20

## V. STATEMENTS AND PAYROLLS  
20

1. Compliance with Copeland Regulations (29 CFR 3)  
   20
2. Payrolls and Payroll Records  
   21

## VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR  
23

## VII. SUBLETTING OR ASSIGNING THE CONTRACT  
23

## VIII. SAFETY: ACCIDENT PREVENTION  
23

COALFIELDS EXPRESSWAY  
Appendix 10  
DESIGN-BUILD CONTRACT  
January 11, 2002
IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS  
X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT  
XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION  
1. Instructions for Certification - Primary Covered Transactions  
XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING  
ATTACHMENT A  Employment Preference for Appalachian Contracts
I GENERAL

1. 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.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

   Section I, paragraph 2;

   Section IV, paragraphs 1, 2, 3, 4, and 7;

   Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

   a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

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 and 41 CFR 60) 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 Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American 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 State highway agency (SHA) (SHA as used herein means the Virginia Department of Transportation) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his 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, preapprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO 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 minority group employees.

   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 minority groups 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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group 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, he is expected to
observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group 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 his 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 his avenues of appeal.

6. **Training and Promotion:**
a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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 minority group and women employees 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 his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best 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 SHA 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 minority and women 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 minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 SHA.

8. 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.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. 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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:
i. The number of minority and non-minority group members and women employed in each work classification on the project;

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

iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA 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. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of
race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)
1. **General:**

   a. All mechanics and laborers 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 (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, 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 paragraphs 4 and 5 of this Section IV.

   b. 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.

   c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**
a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

   i. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

   ii. the additional classification is utilized in the area by the construction industry;

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

   iv. with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour 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.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional 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. Said 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

e. The wage rate (including fringe benefits where appropriate)
determined pursuant to paragraph 2c or 2d of this Section IV shall
be paid to all workers performing work in the additional
classification from the first day on which work is performed in the
classification.

3. **Payment of Fringe Benefits:**

   a. 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 or subcontractors, as
appropriate, shall either pay the benefit as stated in the wage
determination or shall pay another bona fide fringe benefit or an
hourly case equivalent thereof.

   b. If the contractor or subcontractor, as appropriate, does not make
payments to a trustee or other third person, he/she may consider as
a 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.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

   a. Apprentices:

      i. 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 DOL,
      Employment and Training Administration, Bureau of
      Apprenticeship and Training, or with a State apprenticeship
      agency recognized by the Bureau, or if a person is
      employed in his/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 Bureau of Apprenticeship
      and Training or a State apprenticeship agency (where
appropriate) to be eligible for probationary employment as an apprentice.

ii. The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

iii. 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 journeyman-level 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 for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:
i. 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 DOL, Employment and Training Administration.

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

iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

iv In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. 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.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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, as 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 SHA contracting officer 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.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any
laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

V. **STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.
2. **Payrolls and Payroll Records:**

   a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

   b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

   c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C.
20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/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 maintained under paragraph 2b of this Section V and that such information is correct and complete;

ii. that such 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 the Regulations, 29 CFR 3;

iii that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. 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 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

   a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

   b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

   c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

Section Not Used

VIII. SAFETY: ACCIDENT PREVENTION

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 SHA 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. 333).

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. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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, the following notice 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:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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 not more that $10,000 or imprisoned not more than 5 years or both."

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

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.
XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary 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 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 primary 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 department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary 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," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary 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 primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. 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.

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.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant 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 judgement 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 primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

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," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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 Covered Transactions:

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 participation in this transaction 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.

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(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 his or her bid or proposal that he or she 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 2A
APPALACHIAN PROVISIONS

EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS
(Applicable to Appalachian contracts only.)

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 he 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, he 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 1 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 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.
ATTACHMENT 3
THE WAGE DETERMINATION OF THE SECRETARY OF LABOR

Project wages will be in accordance with the Wage Determination of the Secretary of Labor in effect at the time Notice to Proceed for each Section Completion Work is issued by the Department.
ATTACHMENT 4
EQUAL EMPLOYMENT OPPORTUNITY

SPECIAL PROVISION
000—001
Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
   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;
   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);
      (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American 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 and which is set forth in the solicitations from which this contract resulted.

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 or 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 7a 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 covered area. Covered
construction contractors performing contracts 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 contract 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 any Federal
procurement contracting officer. The Contractor is expected to make substantially uniform
progress toward 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, will assign two or more women to
each construction project. The Contractor shall specifically ensure that all foremen,
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 or 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 therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman 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 compiled 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, annual report, etc.; 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, General Foremen, etc., 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 it in any advertising in the news media, specifically including minority and female news media, 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. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

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 a 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 at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

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 non-segregated 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.

q. 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. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, 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 (for example, even though the Contractor has achieved its goals for women generally, 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 national 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 of 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 shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official 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 shall 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).

16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.
Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

Virginia Department of Transportation
SPECIAL PROVISION FOR
NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

Reissued April, 1987
Reissued November 1, 1994

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 covered 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 thought 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

<table>
<thead>
<tr>
<th>Economic Area</th>
<th>Goal (Percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>COALFIELDS EXPRESSWAY</td>
<td>44</td>
</tr>
<tr>
<td>January 11, 2002</td>
<td>Appendix 10</td>
</tr>
<tr>
<td>DESIGN-BUILD CONTRACT</td>
<td></td>
</tr>
</tbody>
</table>
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 Albemarle; 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 Charlotte; 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 Frederick; MD St. Marys: MD Washington; VA Clarke;
VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA
Rappahannock; VA Shenandoah; 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 - Bristol, 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.

Maryland

019 Baltimore MD:

Non-SMSA Counties ........................................................................................................... 23.6
MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.
NON-COLLUSION AFFIDAVIT—Form A

STATE OF __________________________) )SS:
COUNTY OF ________________________) )

Each of the undersigned, being first duly sworn, deposes and says that:

A. __________ is the __________ of __________ and __________ is the __________ of __________, which entity(ies) are the __________ of __________, the entity making the foregoing proposal.

B. The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the proposal is genuine and not collusive or sham; the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any proposer or anyone else to put in a sham proposal or that anyone shall refrain from proposing; the proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the proposer or any other proposer, or to fix any overhead, profit or cost element included in the proposal, or of that of any other proposer, or to secure any advantage against the TTA or anyone interested in the proposed agreement; all statements contained in the proposal are true; and, further, the proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, proposal depository or any member, partner, joint venturer or agent thereof to effectuate a collusive or sham proposal.

C. The proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its proposal to any other proposer, or seek to obtain information or data regarding the price or other terms of any other proposal, until after award of the Agreement or rejection of all proposals and cancellation of the RFP.

____________________________________ ______________________________________
(Signature)                                                       (Signature)
____________________________________ ______________________________________
(Name Printed)                                                (Name Printed)
____________________________________ ______________________________________
(Title)                                                               (Title)

Subscribed and sworn to before me this ___ day of _____, 2001.

_______________________________________
Notary Public in and for said County and State
My commission expires: ________________.

[Duplicate or modify this form as necessary so that it accurately describes the entity making the proposal and so that it is signed on behalf of all partners, members, joint venturers and Major Participants of the proposer.]
BUY AMERICA CERTIFICATION—Form B

(To be signed by authorized signatory(ies) of Proposer)

The undersigned certifies that only domestic steel and iron will be used in 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 which 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 the cost of such materials does not exceed 0.1% of the Development Price.

Date: __________

Signature

_____________________________
Title
The undersigned, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Note: Providing false information may result in criminal prosecution or administrative sanctions.

Date: __________

Signature

Title
CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING—
Form D

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. 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;

2. 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.

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.

The undersigned 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.

Date: __________    ____________________________
Signature

_____________________________
Title

[Duplicate or modify this form as necessary so that it accurately describes the entity making the proposal and so that it is signed on behalf of all partners, members or joint venturers of the proposer.]
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION—FORM E

The proposer ____ [proposed subcontractor ____] certifies that he/she/it (i) has ______ [has not_____] developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2; (ii) has ____ [has not ____] participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, where required, (iii) has ____ [has not ____] filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President’s Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by proposers and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.
Modifications to the Department’s Right of Way Manual of Instructions
(Volume I)

The following sections of the VDOT Right of Way and Utilities Division Manual of Instructions (Volume I) shall apply to the Contractor in performance of its duties under Article 6 of the Design-Build Contract for the Route 28 Project.

Within the text of the sections listed below, the word “Contractor, acting as an agent for VDOT” shall be substituted wherever references are made to “VDOT”, “the Department”, “Right of Way and Utilities Division”, “District Offices”, or other such personnel, departments or divisions of VDOT said to be performing activities, reviewing documents, and receiving information relative to the ROW acquisition process. This word substitution shall not apply whenever text describes the power to exercise eminent domain, as such power remains solely with VDOT.

CHAPTER 1: INTRODUCTION DATED JULY 1, 1999

Section 1 – Purpose and Objectives
Section 4 – Professional Conduct & Public Relations, but limited only to the following subsections:
   1.4.1 – General
   1.4.2 – Work Environment
   1.4.5 – Code of Ethics

CHAPTER 2: PRELIMINARY RIGHT OF WAY STAGE DATED JULY 1, 1999

Section 1 – General
Section 2 – Right of Way Plans & Estimates
Section 3 – Right of Way Estimates & Field Studies
Section 4 – Field Inspection Plans
Section 5 – Frontage Road Studies
Section 6 – Public Hearings and Meetings

CHAPTER 3: LEGAL CONSIDERATIONS IN RIGHT OF WAY AND UTILITIES ACQUISITION DATED JULY 1, 1999

Section 3 – Preliminary Title Work, but limited only to the following subsections:
   3.3.1 – General
   3.3.2 – Title Reports
   3.3.3 – Current Owner Rundowns
   3.3.4 – Timing of Preliminary Title Work
   3.3.5 – Responsibility for Title Work

-1-
CHAPTER 4: APPRAISAL
DATED MAR. 1, 2000

Section 1 – Appraisal Administration, but limited only to the following subsection:
4.1.14 – Fee Appraiser Pre-Qualification, Part A – Appraiser’s Application

Section 2 – Pre-negotiation and Appraisal Reports

Section 3 – The Sales Brochure

Section 4 – Elements of the Appraisal Report

Section 5 – Special Appraisal Topics

CHAPTER 5: ACQUISITION
DATED MAR. 1, 2000

Section 1 – Introduction

Section 2 – Preparation for Negotiations

Section 3 – Initial Negotiations

Section 4 – Continuing Negotiations and Acceptance

Section 5 – Donations, Proffers & Dedications

Section 6 – Special Clients

Section 7 – Easements

Section 9 – Special Property Elements

Section 10 – Acquisition of Residues

Section 12 – Administrative Settlements, but limited only to the following subsections:
5.12.1 – General
5.12.2 – Justification for Administrative Settlements
5.12.4 – Agreements after Certificate

Section 13 – Industrial & Recreational, Historical Access Roads

Attachment 1 – Option Clauses

Attachment 2A – Making a Closed Survey and Preparing the Plats

Attachment 2B – Metes and Bounds Description Samples

Attachment 3 – Special Negotiations Acquisition Procedures

CHAPTER 6: RELOCATION ASSISTANCE AND PAYMENTS PROCEDURE
Section 404.01 – General, but EXCLUDING ONLY Paragraph 10, titled “Annual Report”

Section 404.02 – Services
Section 404.03 – Moving Payments
Section 404.04 – Replacement Housing Payments
Section 404.05 – Mobile Homes
Section 404.06 – Last Resort Housing

APPENDIX A: RIGHT OF WAY DEFINITIONS DATED JULY 1, 1999

RIGHT OF WAY AND UTILITIES MANAGEMENT SYSTEM (RUMS)

All parcels that require the filing of a certificate and/or that involve residue parcels will be set up in the Right of Way and Utilities Management System (RUMS). Contractor shall have computers and modems equipped to meet or exceed the Virginia Department of Transportation’s requirements to access and utilize RUMS.
Modifications to the Department’s Right of Way Manual of Instructions
(Volume II)


Contractor will utilize the Manual as a guide, and reserves the right to modify or deviate from the Manual in its dealings with any utility. However, the final product will conform to the utility specifications and VDOT standards.

Within the text of Manual, the word “Contractor, acting as an agent for VDOT” shall be substituted wherever references are made to “VDOT”, “the Department”, “Right of Way and Utilities Division”, “District Offices”, or other such personnel, departments or divisions of VDOT said to be performing activities, reviewing documents, and receiving information relative to the Utility Relocation process.
ARTICLE I. ESCROW AGREEMENT

THIS AGREEMENT, made and entered into this _________ day of ____________, 20 ______ by,

between and among the Commonwealth of Virginia (“Commonwealth”),

(Name and Address of Bank)

a trust company, bank, or savings and loan institution with a principle office located in the Commonwealth (hereinafter referred to collectively as “Bank”) and

(Name and Address of Contractor)

“Surety”) provides:

I. The Commonwealth and the Contractor have entered into a contract with respect to Virginia Department of Transportation Contract Id. No _________ (“the contract”). This Agreement is pursuant to, but in no way amends or modifies the contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

II. In order to assure full and satisfactory performance by the Contractor of its obligations under the contract, the State Treasurer is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of the Commonwealth, elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the contract or any other instrument or agreement between the Commonwealth and the Contractor.

III. The Commonwealth shall from time to time pursuant to its contract pay the Bank amounts retained by it under the contract. Except as to amounts actually withdrawn from escrow by the Commonwealth, the Contractor shall look solely to the Bank for the payment of funds retained under the contract and paid by the Commonwealth to the Bank. The risk of loss by diminution of the principle of any funds invested under the terms of this contract shall be solely upon the Contractor.

Funds and Securities held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien or another process whatsoever. Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety.

IV. Upon receipt of checks or warrants drawn by the State Treasurer and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

V. The following securities, and none other, are approved securities for all purposes of this Agreement:

1. United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificate of Indebtedness or United States Treasury Bills.
2. Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principle and interest by the United States.
3. Bonds or notes of the Commonwealth of Virginia.
4. Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor’s or Moody’s Investors Service rating of at least “A”, and
5. Certificates of deposit issued by commercial Banks located within the Commonwealth, including, but not limited to, those insured by the Bank and its affiliates.
6. Any bonds, notes, or other evidences of indebtedness listed in Section V. (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than $25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth in the contract.
ORDER NO.:

forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the Securities themselves, and the securities have the date of the repurchase agreement at a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third part, and segregated from other securities owned by the Bank.

(7) No security is approved hereunder which matures more than five years after the date of its purchase by the Bank or deposit by the Contractor.

VI. The Contractor may from time to time withdraw the whole or any portion of the escrowed funds by depositing with the Bank approved securities in an amount equal to, or in excess of, the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.

Upon receipt of a direction signed by the Commonwealth Transportation Commissioner, Deputy Commonwealth Transportation Commissioner or the Chief Engineer, the Bank shall pay the principle of the fund, or any specified amount thereof, to the Treasurer of Virginia for the account of the Department of Transportation.

VII. For its services hereunder the bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same by the Contractor.

VIII. The net income earned and received upon the principle of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank’s fee or any other costs of administration such income shall be deemed a part of the principle of the fund.

IX. The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor’s performance of the contract are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written

By: ____________________________
    Chief Engineer or Contract Engineer

By: ____________________________
    Contractor

By: ____________________________
    Officer, Partner or Owner (Seal)

By: ____________________________
    Officer, Partner or Owner (Seal)

ATTEST:

By: ____________________________
    Bank Officer

By: ____________________________
    Bank

By: ____________________________
    Vice-President

By: ____________________________
    Surety Company

By: ____________________________
    Surety Company

By: ____________________________
    Attorney-in-fact (Seal)

By: ____________________________
    Attorney-in-fact (Seal)

Address

Address
I. PURPOSE

In accordance with the terms and conditions set forth herein and in Article 27 of the Contract, a Dispute Review Board (Board) shall be established to assist in the resolution of Disputes arising out of the work on this Project. The Board shall assist in and facilitate the timely and equitable resolution of Disputes between the Department and the Contractor in an effort to avoid construction delay, the formal claims process and litigation. The Board shall fairly and impartially consider Disputes referred to it, and shall provide non-binding, written recommendations to the Department and the Contractor to assist in the resolution of these Disputes. It is intended that the Department and the Contractor resolve potential Disputes as quickly as possible at the Project level to maintain cooperative working relationships, minimize costs, avoid delays, claims and litigation.

II. DEFINITIONS

Capitalized terms used herein shall have the definitions provided in Exhibit A to the Contract, except as specified in this Paragraph II below:

Dispute Review Board Meeting or Board Meeting - An informal informational meeting attended by members of the Dispute Review Board, the Contractor, and the Department at which Project information, special areas of concern and Project progress are ordinarily discussed.

Dispute Review Board Hearing or Board Hearing - A meeting called for the specific purpose of hearing a Dispute. The Hearing may be scheduled for the next scheduled Board Meeting if this proves advantageous.

Party For the purposes of this Appendix 13, the term shall generally refer to the Department, the Contractor and the three members of the Dispute Review Board.

III. CONTINUANCE OF WORK DURING DISPUTE

See Section 27.2 of the Contract.

IV. BOARD MEMBERSHIP

Board members shall have sufficient experience with the type(s) of design-build construction involved in the Project, the interpretation of contract documents, plans, specifications, and contract negotiations. The Contractor and the Department shall select and/or approve Board members.

The Dispute Review Board shall consist of one member nominated by the Department, and approved by the Contractor; one member nominated by the Contractor, and approved by the Department; and a third member nominated by the first two members, and approved by the Contractor and the Department. At least one member of the Board shall have previous alternative dispute resolution experience.

1 Modified for purposes of the Contract.
The Department and the Contractor shall complete the nomination and the approval process and negotiate a working agreement with their prospective members within four (4) weeks after the Agreement Date. This working agreement shall be separate but in accordance the terms and conditions of the Dispute Review Board Agreement and this Appendix 13. Once executed, copies shall be provided to all Parties. Immediately after approval, the Department and the Contractor shall notify their respective members to begin selection of the third member. The third member shall be selected and approved within two (2) weeks after the first two members are notified to proceed with their selection. The first two members shall ensure that the third member meets the criteria listed herein. Once all members of the Board are selected, the Dispute Review Board shall execute the Dispute Review Board Agreement within two (2) weeks after approval of the third Board member. Around this same time, the Board shall meet to formulate its rules of operation, the selection of its chairperson and the general frequency and location of its Meetings.

The Board members shall be neutral, show no partiality to either the Contractor or the Department, or have any conflict of interest. To that end, no member shall have the following:

1. An ownership interest in any entity involved in the performance of the Contract or a financial interest in the Contract within a period of two (2) years prior to the Agreement Date, except for payment rendered for services on the Dispute Review Board;

2. Previous employment by, or financial ties to the Department, the Contractor Party, or any Subcontractor within a period of two (2) years prior to the award date of the construction contract;

3. A close professional, personal or familial relationship with any key entity involved in the Contract which, in the judgment of either Party, could suggest favoritism or partiality;

4. Prior involvement in the Project of a nature which could compromise that member’s ability to participate impartially in the Board’s activities;

5. Employment with or any contractual relationship with the Department, any Contractor Party, or Subcontractor;

6. A discussion or an agreement with the Department, any Contractor Party or Subcontractor regarding employment or any other type of contractual relationship to occur after the Contract is completed;

As a part of the nomination and approval process, the first two prospective Board members shall submit complete disclosure statements to the Department and the Contractor. Each statement shall include a resume of experience, together with a declaration of all past, present, and anticipated or planned future relationships to the Project and with all Parties and entities involved in the Project. Disclosure of any recent, close, professional, personal and familial relationships with all key members of all Parties to the design or construction contract shall be included. The third Board member shall supply such a statement to the first two Board members and to the Department and the Contractor before his/her appointment is final.

Services of a Board member may be terminated for any reason at any time provided written notice is given no less than thirty (30) calendar days prior to the effective date of termination.
Conditions for termination shall comply with one of the following:

1. The Department may terminate the services of its appointee
2. The Contractor may terminate the services of its appointee
3. The third member’s services may only be terminated by the consent of the Department and the Contractor
4. The personal resignation of the Board member

If it becomes necessary to replace a member of the Board, the replacement member shall be nominated and approved in the same manner as the original member. Once the need for a replacement member is determined, the nomination and approval procedures shall begin immediately and shall be completed within thirty (30) calendar days, or as mutually agreed upon by the Parties, from the notice of termination. The Dispute Review Board Agreement will be amended to reflect the change and the Board shall provide the replacement member all of the information and documentation supplied to the other members up to the effective date of his/her appointment.

V. RULES OF OPERATION FOR BOARD MEMBERS

The Board shall formulate its own rules of operation consistent with the purposes of this Appendix 13. The procedure for operations shall be flexible to allow for changing situations. The Board shall furnish a copy of its rules of operation to the Department and the Contractor.

The Department will furnish the Board a complete set of plans and specifications for each Board member’s use. Other relevant Contract Documents and non-contract documents may also be furnished by or at the request of either the Department or the Contractor.

In order to keep abreast of construction development and progress, the Board shall be informed by the Department and the Contractor of construction activity by means of the timely transmittal of relevant information. Such transmittals shall take the form of standard monthly progress reports supplied by Contractor to the Department in accordance with the Contract and the minutes of any partnering or progress meetings with copies to all Parties.

Unless otherwise agreed to by the Contractor and the Department, Dispute Review Board Meetings shall be held at the Site. These Meetings shall be held at regular intervals (generally every 90 days throughout the life of the Project) and at times of major, unique or critical design or construction activities. The frequency of such Board Meetings shall be as agreed upon by the Department, the Contractor and the Board, depending on the progress of the Work. The frequency of such Meetings may be adjusted for reasons of project complexity, participant’s scheduling, critical operations, or the like at the Parties’ discretion.

In cases of alleged Differing Site Conditions or specific construction problems that may require or be best understood by visual inspection, it will be advantageous for the Board to meet at the Project Site. Where this is inconvenient or will cause delay to the Project, photographs, or video recordings including narrative descriptions of the conditions can be supplied by either or both Parties.

Board Meetings shall consist of an informal round table discussion attended by representatives of the Department and the Contractor directly involved in the work under discussion. Attorneys may attend such meetings and advise their clients but may not participate unless the Parties agree otherwise in writing. An agenda, mutually prepared by the Contractor and the Department, is suggested to keep matters in focus and on track. The Contractor and the Department are encouraged to submit items
early to meet the time frames for inclusion on the agenda. Copies of the proposed agenda shall be distributed to the Board chairperson and the other Parties in sufficient time to be received by each Party no later than seven (7) calendar days before the scheduled Meeting date.

A suggested agenda may include the following:

Meeting convened by the Board’s chairperson

Opening remarks by the Department’s project representative and approval of the last Board Meeting’s minutes, if appropriate

A description by the Contractor or its project representative of:

- work accomplished since the last meeting
- current status of the work schedule
- schedule of future work
- status of past Disputes
- potential Disputes
- proposed solutions for these potential or standing Disputes
- upcoming critical items of work

Discussion by the Department’s project representative of:

- the work schedule from the Department’s perspective
- status of past Disputes
- potential Disputes
- proposed solution of these potential or standing Disputes

Setting of tentative date of next Board Meeting

The Board shall prepare minutes of Board Meetings and circulate them for comments, revisions, and approval of both Parties. Seeking any Board member’s advice or consultation during Meetings or at any other time is counterproductive to the impartial nature of the Board and expressly prohibited.

VI. PROCEDURES FOR SCHEDULING AND CONDUCTING A DISPUTE REVIEW BOARD HEARING

Either the Department or the Contractor may refer a matter believed to be a Dispute to the Board at any time. The request for a Board Hearing (Hearing) shall be submitted in writing to the chairperson of the Dispute Review Board. This request for a Hearing shall state clearly and in full detail the specific issue(s) of the Dispute to be considered by the Board and a recommendation as to whether it may be heard at the next Board Meeting or if a Hearing needs to be arranged. A copy of the request for a Hearing shall be simultaneously furnished to the other Party. After conferring with each Party, the Board chairperson shall establish a submittal schedule and date for the Hearing so that adequate time is allowed for the other Party to respond to the requesting Party’s statement and for the Board members to review both statements and any supporting documentation prior to the Hearing.
Statements and documentation shall conform to the following requirements:

Each Party shall prepare concise written position statements, with page number references for any supporting documentation;

A single, complete, mutually agreed upon compilation of supporting documentation with pages consecutively numbered. The Parties shall cooperate in composing this documentation and submitting copies for each Board member in sufficient time for review prior to the Hearing;

The Party requesting the Hearing shall submit its position paper first, followed by the other Party, with copies provided to each Board member and the other Party;

Normally, Hearings will be conducted at the Project Site by individuals directly involved with the performance of the work. However, any location that can provide all the required facilities and access to necessary documentation may be used. During the Hearing, the party requesting the Hearing shall present its position first, followed by the other party. Attorneys may attend the Hearing and advise their clients but may not participate unless the Parties agree otherwise in writing. Each Party will be permitted successive rebuttals until all aspects are fully covered. The Board members and the Parties may ask questions, request clarification, or ask for additional data. In difficult or complex cases, additional Hearings may be necessary to facilitate full consideration and understanding of all the information and documentation presented. Both the Department and the Contractor shall be given reasonable time to present the information and documentation regarding the issue(s) before the Board.

Generally, a formal transcript will not be prepared. Each Board member will take notes during the Hearing.

During the Hearing no Board member shall express any opinion concerning the merits of any aspect of the Dispute.

VII. BOARD DELIBERATIONS AND RECOMMENDATIONS

After the Hearing is concluded, the Board will confer to formulate its recommendations. All deliberations of the Board will be conducted in private and with individual views kept strictly confidential. The Board’s deliberations and recommendations, together with any explanations for its reasoning, shall not be disclosed to either Party except by final written recommendation.

The Board shall make every effort to reach a unanimous recommendation. If this is not possible, the dissenting member may prepare a minority report.

The Board’s recommendation for resolution of the Dispute will be provided in writing to the Department and the Contractor within one (1) week of the completion of the Hearing. In difficult or complex cases or in consideration of the Board’s schedule, this time may be extended by the mutual agreement of the Board and both Parties.

Within thirty (30) calendar days of receiving the Board’s recommendation, each Party shall respond to the other Party in writing stating its position on the Board’s recommendation. If the Board’s recommendation is accepted, the Department will move to promptly process the resolution as mutually agreed upon by the next monthly progress estimate or within the time frame that is stated in the work/change order. Either Party’s failure to timely respond to the Board’s recommendation shall constitute a rejection of the recommendation.
In the event the Board’s recommendation is rejected, at the request of either Party, the Board may meet with both Parties to provide additional clarification of its recommendations. This Meeting shall not be used to appeal the Board’s recommendation or to introduce additional information or documentation unless such information or documentation is newly revealed and directly pertinent to the issue(s) in question. If new information has become available, either Party may request that information be considered before the Board makes its final recommendation. The recommendation of the Board is not binding upon either Party. The recommendation shall not be admissible in any subsequent administrative or judicial proceeding or discovery related thereto between the Parties and any other entity, regardless of tier, involved in the prosecution of the work.

The Parties agree not to subpoena or otherwise seek discovery from Board members, including their notes, transcripts of Board Meetings or Hearings, any other documents originated by the Board or presented by either Party, and not otherwise part of the normal contract documentation, for any subsequent administrative or judicial proceeding between the Parties or any other entity, regardless of tier, involved in the prosecution of the work.

VIII. PAYMENT FOR BOARD SERVICES

The Department and the Contractor shall pay the cost for Board members services and expenses in accordance with Section VII Payment for Services in the Dispute Review Agreement.

The Department will, at its expense, copy, and mail minutes, monthly progress reports and provides administrative services such as meeting facilities and secretarial services.
PROJECT NAME: Coalfields Expressway

PROJECT LOCATION: Wise, Dickenson and Buchanan Counties, Virginia

I. PARTIES

The parties to this Agreement are:

A. The Virginia Department of Transportation:
   1. Authorized Representative: ________________________________

B. Contractor:
   1. Authorized Representative: ________________________________

C. Dispute Review Board Members:
   1. ________________________________
   2. ________________________________
   3. ________________________________

II. PURPOSE

The Department and the Contractor are now engaged in the design and construction of the Coalfields Expressway.

The construction contract for this Project provides for the establishment and operation of a Dispute Review Board to assist in resolving Disputes as defined in the Contract. The objective of the Board is to consider fairly and impartially the Disputes that are referred to it and to provide written non-binding recommendation(s) to the Department and the Contractor to resolve these Disputes.

III. SCOPE OF DUTIES

Duties of Board members and the other parties to this Agreement shall be as stipulated in the Appendix 13 to the Contract that is incorporated by reference herein. Other duties that may prove necessary to facilitate a recommendation from the Board shall be mutually decided and agreed upon by all signatories to this Agreement.

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2 Modified for purposes of the Contract.
3 To be executed after Agreement Date.
IV. AREAS OF RESPONSIBILITIES

A. Board Responsibilities

The Board is organized to facilitate the resolution of Disputes between the Department and the Contractor arising under the terms and conditions of the Contract. Board members shall not assign or subcontract any of the duties or services of this Agreement.

The Board shall encourage the parties involved in the Dispute to settle issues at the job level prior to arranging for a Hearing before the Board.

Except for the duties and services required by this Agreement and Appendix 13 to the Contract, the Board members shall refrain from giving any advice to either Party concerning the conduct of the work, the merits of a Dispute, the resolution of other non-Dispute problems or other Project-related issues.

B. Contractor Responsibilities

Except for its participation in the Board’s activities as provided for in the Contract, Appendix 13 to the Contract and this Agreement, the Contractor shall not solicit advice or consultation from the Board or its members on matters dealing with the prosecution, conduct, or resolution of Disputes or other Project-related issues.

The Contractor may furnish to each Board member one copy of documents relative to the Contract, other than those furnished by the Department, which are necessary for the performance of the Board to its stated purpose and duties. Contractor shall furnish to each Board member one copy of the Baseline Engineering, Initial Engineering and Plans and Specifications, when available.

C. Department Responsibilities

Except for its participation in the Board’s activities as provided for in the Contract, Appendix 13 and this Agreement, the Department shall not solicit advice or consultation from the Board or its members on matters dealing with the prosecution, conduct, or resolution of Disputes or other Project-related issues. The Department shall furnish each Board member one copy of all Contract Documents, including but not limited to: progress schedules and updates including the most recent approved CPM/Payment Schedule, monthly progress reports provided in accordance with the Contract, change orders, and any other documents necessary for the Board to perform its stated purpose and duties other than documents required to be submitted by Contractor.

The Department will, in cooperation with the Contractor, coordinate the operations of the Board. The Department will arrange for or provide conference facilities at or near the Project Site and provide secretarial and copying services.

V. TERMINATION OF BOARD MEMBER SERVICES

Board members may withdraw from the Board by providing not less than thirty-(30) calendar days written notice prior to the effective date of termination. Board members may be terminated for any reason only by their original nominator. The Department and the Contractor must agree to terminate the services of the third member.
If it becomes necessary to replace a member of the Board, the replacement member shall be nominated and approved in the same manner as the original member. Once the need for a replacement member is determined, the nomination and approval procedures shall begin immediately and shall be completed within thirty (30) calendar days, or as mutually agreed upon by the Parties, from the notice of termination. The Dispute Review Board Agreement will be amended to reflect the change and the Board shall provide the replacement member all of the information and documentation supplied to the other members up to the effective date of his/her appointment.

VI. LEGAL RELATIONSHIPS

The Parties acknowledge and agree that the Dispute Review Board members are serving in a non-binding, advisory capacity. Each Board member, in the performance of his or her duties on the Board, is acting independently and is not an employee or agent of either the Department or the Contractor. To that end, each member shall carry insurance necessary for the performance of their duties while serving on the Board. The cost of such insurance shall be a part of the hourly or daily fee agreed to.

By signing this Agreement all signatories agree to the respective duties and obligations stated herein.

The Parties agree not to subpoena or otherwise seek discovery from Board members, including their notes, transcripts of Board Meetings or Hearings, any other documents originated by the Board or presented by either Party, and not otherwise part of the normal contract documentation, for any subsequent administrative or judicial proceeding between the Parties or any other entity, regardless of tier, involved in the prosecution of the work.

VII. PAYMENT FOR SERVICES

The Department shall pay the invoiced cost of all Board members’ services and expenses per Board Meeting. The Department and the Contractor shall share equally (50/50 split) in the cost for Board members services and expenses for Board Hearings. Any amounts due and owing by Contractor and not paid may be paid by Department in its sole discretion and offset against amounts due Contractor by Department under the Contract.

Payment for services of the Department appointed and Contractor appointed members of the Board shall be at the hourly or daily rates agreed to between the Department and the Contractor and their respectively appointed Board member. Payment for services rendered by the third member of the Board shall be made at the rates agreed to among the Department, the Contractor, and the third member. The Department, the Contractor, and the third member shall mutually agree upon changes to the billing rates of the third member.

Changes in the billing rates are subject to approval between the Department and the Contractor and the respective and mutually appointed members.

The first two members appointed to the Board shall be reimbursed for the time and expense associated in the selection of the third member.

Direct non-fee expenses shall be reimbursed at the actual cost to the Board member, unless such costs are covered by the State per diem charges, in which case the State guidelines shall govern. Non-fee expenses may include, but are not limited to, automobile mileage or rental, parking fees, travel expense from the member’s point of departure to the initial point of arrival, food and lodging, printing, long distance telephone calls, postage and courier delivery. Billing for these expenses shall include a detailed listing of items or charges supported by copies of the original bills, receipts, invoices, or expense accounts.
If the Board requests special services such as accounting or data research, both the Contractor and the Department must agree prior to the service being solicited and the cost will be divided as mutually agreed upon.

For Board Meetings, each Board member shall submit to the Department an invoice for services rendered and associated costs within 10 days after any scheduled Meeting during the progress of the work. These invoices shall be in a format approved by the Department accompanied by a general description of the activities performed during that period.

For Board Hearings, the Board shall submit an invoice of its fees and associated costs within 10 days after any scheduled Hearing to the Contractor for processing with copies to the Department. The Contractor shall submit fifty (50) percent of such amounts on its monthly progress estimate (referenced as DRB Hearing #1, DRB Hearing #2, etc. as appropriate) for payment. The value of the services submitted for payment shall be based on the established billing rate for the number of hours/days rendered for each Board member together with any direct, non-fee expenses. The Contractor shall make payment to the Dispute Review Board within 60 days from its receipt of the invoices. Payment received shall constitute full compensation for services performed and for all materials, supplies, services, and incidentals required completing the services.

Each Board member shall keep, available for inspection by representatives of the Department and the Contractor for a period of three years after final payment of the construction contract the cost records and accounts pertaining to this Agreement.
VIII. DATE OF AGREEMENT

This Agreement is effective as of ________________________________
And is signed by the Party or its duly authorized representative:

1. Board Member (Department Appointed) ________________________________
2. Board Member (Contractor Appointed) ________________________________
3. Board Member (Board Appointed) ________________________________

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: Department Representative: ________________________________
    Title: ________________________________

CONTRACTOR

By: Contractor Representative: ________________________________
    Title: ________________________________
This amendment No. 1 ("Amendment No. 1") is entered into by and between the Virginia Department of Transportation, a Department of the Commonwealth of Virginia ("VDOT") and Kellogg Brown & Root, Inc. ("KBR") in order to modify the Comprehensive Agreement to Develop and Maintain Coalfields Expressway ("CFX") dated January 11, 2002, ("the Agreement"). The Agreement includes a Design/Build agreement for the construction of the Project: a 50 mile, four lane, primary highway through Wise, Dickenson and Buchanan counties to the eastern terminus at the West Virginia state border, following State Route 83 corridor through the area. The CFX will link with the West Virginia Coalfields Expressway near Paynesville, West Virginia (the "Project").

Due to the changes in the scope of the Initial Engineering Work (as that term is defined in the Agreement) and in Project scope (as defined in the revised Appendix 2 attached hereto), the changes on the pages following this signature page are hereby agreed to and incorporated into that Agreement. All capitalized terms used therein shall have the same meaning as the term in the Agreement. All sections of the Agreement not specifically modified by this Amendment No. 1 shall remain in full force and effect. In the event of a conflict between the language or provisions in the Agreement and this Amendment No. 1, the language and provisions in this Amendment No. 1 shall control.

VDOT and KBR accept this Amendment No. 1, and its terms and conditions on the following pages, as indicated by the authorized representative's signature below. The parties agree that execution of this Amendment No. 1 shall be considered as the Notice to Proceed 1 ("NTP1") with the Initial Engineering Work, provided VDOT has received written approval of the Design Build Contract from FHWA. In the event VDOT has not received FHWA written approval, Notice to Proceed 1 shall be issued upon receipt of such written approval.

Virginia Department or Transportation           Kellogg Brown & Root, Inc.

Authorized Signature            Authorized Signature

Original with signatures on file in the Innovative Project Delivery Division
AMENDMENT NO. 1
REVISIONS TO COMPREHENSIVE AGREEMENT
for the Coalfields Expressway dated January 11, 2002

The following sections of the Agreement are modified as follows:

ARTICLE I
Recitals

Section 1.14. is deleted and replaced by:

Because financing of the entire CFX has not been obtained as of the date of the execution of this Agreement, the CFX will be constructed in four Sections, with the Notice to Proceed for the Section Completion Work for each Section contingent upon securing of financing for such Section and satisfaction of other conditions precedent as described in Article IV, below: Section A consists of the section from Proposed U.S. 460 Connector Interchange west of Bull Gap to U.S. 460 Interchange east of Harmon Junction; Section B consists of the section from Pound to Clintwood; Section C consists of the section from U.S. 460 Interchange east of Harmon Junction to the West Virginia State Line; and Section D consists of the section from Clintwood to Proposed U.S. 460 Connector Interchange west of Bull Gap.

ARTICLE III
Section 3.1. Basic Agreement.

Paragraph (c) is deleted and replaced by:

(c) As described on Exhibit B, the Project shall be developed in four Sections as described below:

(i) Upon execution of the Design-Build Contract, VDOT will issue a Notice to Proceed to the Contractor to undertake the Initial Engineering Work. Upon completion of sufficient engineering for KBR to be able to submit a fixed price for the Section Completion Work for Section A and for the Department to evaluate such fixed price, and upon agreement of the fixed price, the Department and KBR shall enter into a Section Supplement for Section A containing a Section Completion Work Price and a Guaranteed Completion Date. The Department shall not be obligated to issue a Notice to Proceed for Section Completion Work for this Project Section until the conditions precedent set forth in Section 4.2 for such Project Section have been satisfied or waived in writing.
(ii) With respect to Sections B, C and D, after submission of a fixed price from KBR to undertake the engineering required to develop the Construction Plans for each respective Project Section and the Department has evaluated such fixed price, and upon agreement of the fixed price, the Department and KBR shall enter into a supplement for each such Project Section containing a Complete Construction Plans Price. Upon completion of sufficient engineering for KBR to be able to submit a fixed price for the Section Completion Work for each of Sections B, C and D and for the Department to evaluate such fixed prices, and upon agreement of the fixed price, the Department and KBR shall enter into a Section Supplement for each such Project Section containing a Section Completion Work Price and a Guaranteed Completion Date. The Department shall not be obligated to issue a Notice to Proceed for Section Completion Work for any Project Section until the conditions precedent set forth in Section 4.2. for such Project Section have been satisfied or waived in writing.

Section 3.5 Development Fee.

The last sentence of paragraph (a) is deleted and replaced by:

The $4,000,000 reimbursement is included within the Initial Engineering Price as set forth in Section 14.1.1 of the Design-Build Contract. KBR shall provide sufficient and appropriate documentation of all development fees to allow VDOT to obtain reimbursement from FHWA.

ARTICLE IV

Revise title of Article IV to read;

INITIAL ENGINEERING WORK, CONSTRUCTION PLANS WORK AND SECTION COMPLETION WORK

Section 4.1 Pricing of Section Completion Work

The first sentence is deleted and replaced by:

Upon completion of so much of the Initial Engineering Work or the Construction Plans Work as necessary for KBR to provide a fixed price for the Section Completion Work for each Project Section, KBR shall submit to the Department its proposed Fixed Price for the Section Completion Work for such Project Section, and any allowances as specified in the form of the Section A Supplement attached hereto as Exhibit D, and proposed CPM/Payment Schedule and Guaranteed Completion Date based on an assumed date of Notice to Proceed for each such Project Section.
Section 4.2 Conditions Precedent to Notices to Proceed for Initial Engineering Work and Section Completion Work.

A portion of paragraph 4.2(a)(i), specifically 4.2 (a)(i)(A)(i) is deleted and replaced by:

(i) FHWA has not classified the Project or any Section thereof as a "Mega Project"; the parties acknowledge that after each Section Supplement is executed, and prior to issuance by the Department of a Notice to Proceed with each Section B, C, and D, the FHWA must confirm in writing that it has not classified the Project or any Section thereof as a "Mega Project",

Section 4.3 Milestones.

Paragraphs (a) through (d) are deleted and replaced by:

(a) Section A Milestones.

(i) Completion of the Baseline Engineering for Section A and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by a date which is twenty one (21) months after the issuance of Notice to Proceed for Initial Engineering Work;

(ii) (A) the General Assembly shall have adopted legislation reasonably satisfactory to the Department evidencing intent of the General Assembly to make appropriations sufficient to support the Section A Plan of Finance and (B) CTB shall have taken action to update the Virginia Transportation Plan (formerly known as the Six-Year Transportation Improvement Program) allocating funds to the Project as contemplated by the Section A Plan of Finance by a date which is twenty two (22) months after issuance of the Notice to Proceed for Initial Engineering Work;

(iii) Acceptance by Department of a definitive Plan of Finance for the Section Completion Work for Section A, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available at the time or are reasonably expected to be available at the time required by the CPM/Payment Schedule, by a date which is twenty two (22) months after the issuance of the Notice to Proceed for Initial Engineering Work; and

(iv) Satisfaction of all other conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2. by a date, which is twenty two (22) months after the issuance of the Notice to Proceed for Initial Engineering Work.

(b) Section B Milestones.
(i) After review of fixed price submission for the engineering required to develop the Construction Plans (as that item is defined in Attachment C to Appendix 6 in the Design-Build Contract) for Section B and the Department's acceptance of such pricing, the Department shall issue a Notice to Proceed for Section B Construction Plans Work, such time being no later than twenty one (21) months after issuance of the Notice to Proceed for the Initial Engineering Work;

(ii) Completion of the Baseline Engineering for Section B and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by a date which is twenty-four (24) months after the issuance of Notice to Proceed for Section B Construction Plans;

(iii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms, by a date which is twenty-five (25) months after the issuance of the Notice to Proceed for Section B Construction Plans Work;

(iv) Acceptance by Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably expected to be available at the time required by the CPM/Payment Schedule, by a date which is twenty-five (25) months after the issuance of the Notice to Proceed for Section B Construction Plans Work;

and

(v) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2 by a date which is twenty-five (25) months after the issuance of the Notice to Proceed for Section B Construction Plans Work.

(c) Section C Milestones.

(i) After review of fixed price submission for the engineering required to develop the Construction Plans for Section C and the Department's acceptance of such pricing, the Department shall issue a Notice to Proceed for Section C Construction Plans Work, such time being no later than thirty six (36) months after issuance of the Notice to Proceed for the Initial Engineering Work;

(ii) Completion of the Baseline Engineering for Section C and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by a date which is twenty-eight (28) months after the issuance of Notice to Proceed for Section C Construction Plans Work;
(iii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms;

(iv) Acceptance by the Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably expected to be available the time required by the CPM/Payment Schedule;

and

(v) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2.

(d) Section D Milestones.

(i) After review of fixed price submission for the engineering required to develop the Construction Plans for Section D and the Department's acceptance of such pricing, the Department shall issue a Notice to Proceed for Section D Construction Plans Work, such time being no later than fifty one (51) months after issuance of the Notice to Proceed for the Initial Engineering Work;

(ii) Completion of the Baseline Engineering for Section D and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by a date which is twenty-eight (28) months after the issuance of Notice to Proceed for Section D Construction Plans Work;

(iii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms;

(iv) Acceptance by the Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably expected to be available the time required by the CPM/Payment Schedule;

and

(v) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2.
EXHIBIT A

DEFINITIONS

Insert the following definitions for Construction Plans Work and Complete Construction Plans Price:

**Construction Plans Work**, with respect to Section B, C or D, means the Work necessary to achieve the Construction Plans milestone as described in Attachment C to Appendix 6 of the Design-Build Contract.

**Complete Construction Plans Price**, with respect to Section B, C or D, has the meaning set forth in the related supplement.

Delete (d) under Force Majeure and replace with:

(d) any delay due to the failure by a Utility Owner to meet the time parameters set forth in the Contractor's agreement with the Utility Owner entered into pursuant to Section 7.2.4 of the Design-Build Contract and which delays the Critical Path or any unreasonable delay due to failure by a Utility Owner to reach an agreement with the Contractor and which delays the Critical Path.

Delete definition of Section Completion Work and replace with:

**Section Completion Work** means, with respect to Section A, all Work other than Initial Engineering Work, and with respect to Sections B, C and D, all work other than Construction Plans Work.
EXHIBIT D

FORM OF SECTION A SUPPLEMENT

Article 14. COMPENSATION

Paragraph 14.1.2.3 is deleted and replaced by:

14.1.2.3 Environmental Mitigation Allowance

The Contract Price includes an Environmental Mitigation Allowance in the amount of $____ for Section A Environmental Mitigation Work as directed by the Department. Contractor's costs for Environmental Mitigation Work will be reimbursed from the Environmental Mitigation Allowance until the Environmental Mitigation Allowance has been exhausted. Compensation shall be based on time and materials as set forth in Section 19.5.2.1 without markup for overhead or profit.
EXHIBIT F

SECTION A PRELIMINARY PLAN OF FINANCE

Exhibit F is amended as set forth on the following page to address cash flow needs for the first 30 months for the Initial Engineering Work to be performed in Amendment No. 1. Plan of Finance beyond Initial Engineering Work as defined in Amendment No. 1 shall be determined after Section A Milestones as defined in Amendment No. 1 are satisfied.
# Coalfields Expressway (CFX)

## Section A Plan of Finance Cash Flows for Initial Engineering Work for Section A

### Allocation of Funds Available

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**Funding Needs Beyond Coalfields Amendment No.1**

- as shown in Plan of Finance dated 1/11/2002
- Includes insurance premium of $595,000
- Future monthly construction draws to be determined

*August 29, 2002*
REVISIONS TO DESIGN-BUILD CONTRACT
for the Coalfields Expressway dated January 11, 2002

RECITALS

Paragraph B is deleted and replaced by:

B. The Work will consist of several independent Scopes of Work: the Initial Engineering Work, as described in Appendix 2, the Construction Plans Work for each of Sections B, C and D and the Section Completion Work for each of Sections A, B, C and D of the Project (each, a "Project Section"). In general, the purpose of the Initial Engineering Work is to enable Contractor to proceed with the Section Completion Work for Section A expeditiously and efficiently once it has received notice to proceed with such work, and to enable a fixed price to be set for the Section Completion Work for Section A. In addition, with subsequent, independent notices to proceed for Construction Plans Work for Sections B, C and D, the purpose is to enable Contractor to proceed with the Section Completion Work for each remaining Project Section expeditiously and efficiently once it has received a notice to proceed with such work, and to enable a fixed price to be set for the Section Completion Work for each Project Section.

ARTICLE 3 A portion of paragraph 3.1.2, specifically 3.1.2 (A)(i) is deleted and replaced by:

(i) FHWA has not classified the Project or any Section thereof as a "Mega Project"; the parties acknowledge that after each Section Supplement is executed, and prior to issuance by the Department of a Notice to Proceed with each Section B, C, and D, the FHWA must confirm in writing that it has not classified the Project or any Section thereof as a "Mega Project",

Paragraph 3.1.4 is deleted and replaced by:

3.1.4 Contractor shall complete the Baseline Engineering by the dates set forth in the Comprehensive Agreement, Sections 4.3(a)(i), 4.3(b)(i), 4.3(c)(i) and 4.3(d)(i).

ARTICLE 6

Paragraph 6.1.9: The first sentence is deleted and replaced by:

All costs in connection with acquisitions of Project Rights of Way shall be paid as provided in Article 6.6.
ARTICLE 7

The second sentence is deleted and replaced by:

A preliminary survey of Utilities likely to be impacted by the work shall be performed by the Contractor as part of the Baseline Engineering.

ARTICLE 12

Paragraph 12.2 Retention of Records, the first sentence is deleted and replaced by:

Contractor shall maintain all records and documents relating to Work related to any Project Section under this Contract (including copies of all original documents delivered to Department) for three years after the final voucher is paid by FHWA of such Project Section or termination date of this Contract, as applicable, and shall notify Department where such records and documents are kept.

ARTICLE 14

Paragraph 14.1.1, the first sentence is deleted and replaced by:

Section 14.1.1 Initial Engineering Price

As full compensation for the Initial Engineering Work, and subject to the limitations contained herein, Contractor shall be paid the sum of $30,646,457 (such amount, as it may be adjusted from time to time as provided herein, is referred to herein as the "Initial Engineering Price").

ARTICLE 22

Paragraph 22.2 is deleted and replaced by: Section

22.2 Professional Liability Insurance

Prior to the Notice to Proceed for Initial Engineering Work, Contractor shall procure an insurance policy for professional liability covering all work performed by any licensed professional. Such insurance shall provide coverage of no less than $1 million per occurrence and $5 million in the aggregate to be available specifically and exclusively to the Project. The insurance shall include a deductible not greater than $100,000 for each claim. Contractor shall demonstrate sufficient financial ability to meet any deductible. Any of these policies of insurance that expires or is cancelled within three years of the completion date of the Project shall be extended through the use of "Tail" coverage for a period of not less than three (3) years.
APPENDIX 1

DEFINITIONS

Insert the following definitions for Construction Plans Work and Complete Construction Plans Price:

Construction Plans Work, with respect to Section B, C or D, means the Work necessary to achieve the Construction Plans milestone as described in Attachment C to Appendix 6 of the Design-Build Contract.

Complete Construction Plans Price, with respect to Section B, C or D, has the meaning set forth in the related supplement.

Delete (d) under Force Majeure and replace with:

(d) any delay due to the failure by a Utility Owner to meet the time parameters set forth in the Contractor's agreement with the Utility Owner entered into pursuant to Section 7.2.4 of the Design-Build Contract and which delays the Critical Path or any unreasonable delay due to failure by a Utility Owner to reach an agreement with the Contractor and which delays the Critical Path.

Delete definition of Section Completion Work and replace with:

Section Completion Work means, with respect to Section A, all Work other than Initial Engineering Work, and with respect to Sections B, C and D, all work other than Construction Plans Work.
APPENDIX 2

INITIAL ENGINEERING SCOPE OF WORK

Delete in its entirety and replace by:

INITIAL ENGINEERING SCOPE OF WORK

The Scope of Work for the Initial Engineering Work of the Coalfields Expressway Project is as follows:

Engineering

• Roadway - KBR will provide engineering services to complete Preliminary Field Inspection Plans for Section A only. In addition, KBR will provide engineering services to complete Construction Plans for a portion of Section A consisting of 6.29 miles of Coalfields Expressway mainlanes, Ramp B (0.77 miles) of the proposed U.S. 460 interchange west of Bull Gap, a connector (0.66 miles) from the terminus of Ramp B to Route 609, Ramps 1 (0.51 miles), Ramp 2 (0.49 miles), Ramp 3 (0.29 miles), Ramp 4 (0.36 miles) and Ramp 7 (0.47 miles) of the U.S. 460 interchange east of Harmon Junction. Attachment C, Plan Preparation and Plan Development, to Appendix 6, Project Scope, to the Design-Build Contract provides a definitive scope of work for these plans and a list of required deliverables.

• Bridges - KBR will provide engineering services to complete Preliminary Field Inspection Plans and complete Construction Plans for the following bridges in Section A:

Over Route 609 and Jess Branch
Over Route 609 and Bull Creek/Norfolk Southern Railway
Over Route 601 and unnamed tributary to Deel Fork
Over Route 604 and Poplar Creek
Over Ramp 4 U.S. 460 Interchange east of Harmon Junction
Over U.S. 460, Levisa Fork and Norfolk Southern Railway, Ramp 1
Over Levisa Fork and Norfolk Southern Railway, Ramp 7

• A full scope Geotechnical investigation is included for the portion of Section A that is to be developed to Construction Plans only.

• A preliminary Geotechnical investigation is included for the remaining portion of Section A not included in above scope.

• Surveying Right of Way Acquisition is included for the portion of Section A that is to be developed to Construction Plans only.

• Aerial photogrammetry and design surveying for Section A only.

• All agency permit submittals for approval for the portion of Section A that is to be developed to Construction Plans only.
Right of Way Acquisition/Utilities

- **Section A** - KBR will perform all Right of Way (ROW) acquisition activities, for the portion of Section A to be developed to Construction Plans, up to but excluding making offers to land owners. This work will include the following tasks necessary for the portion of Section A Completion Work to be developed to Construction Plans:
  - Preparation of the Right of Way Acquisition Plan
  - Conduct courthouse research to locate each parcel, parcel boundary, and parcel ownership. This research will also include the determination of any special ownership conditions, such as minors, heirships, trusts, etc.
  - Perform surveys to locate property location and boundaries. Prepare a topographic map that locates all structures such as tree lines, fences, out buildings, roads and driveways, houses, and other pertinent features.
  - Request and obtain title reports.
  - Order the appraisals, check and review each appraisal as received and prepare and package appraisals for VDOT review and approval.
  - Prepare an inventory of available Decent, Sanitary and Safe (DSS) housing.
  - Perform Phase I Environmental Assessments on each parcel.
  - Prepare ROW Plans.

- **Sections B, C and D** - No ROW work in these Sections.

- **Utility Relocations**
  For the portion of Section A to be developed to Construction Plans, KBR will negotiate with utility companies, as necessary, to determine pricing for relocating those utilities that the companies desire to relocate themselves. For the portion of Section A that will be developed to only Preliminary Field Inspection Plans, KBR will review plans in accordance with Attachment C to Appendix 6 of the Design Build Contract. For Sections B, C and D, KBR will not perform work related to the utility relocation.

**Project Administration**

- The following Project Administration tasks are authorized and included in the Initial Engineering Scope of Work:
  - General management of the work
  - Establishment of a project office at the project site
  - Preparation of required project plans and procedures, such as Document Control and Distributions, Engineering Quality Control Plan, Construction Quality Assurance and Control Inspection Program, Construction Traffic Management Plan, Safety Plan, etc.
  - Activities required under the Disadvantage Business Enterprise Plan
  - Preparation and submission of all necessary Section A permit applications
  - Preparation of a Project Estimate and Schedule for Guaranteed Pricing & Completion Work for the portion of Section A to be developed to Construction Plans
  - Establishment of a Project Internet Web Site
  - Preparation and Submission of Project Reports
  - Preparation of and Monthly Updates of CPM/Payment Schedule

APPENDIX 6
SCOPE OF WORK

Delete APPENDIX 6 and replace with:

COALFIELDS EXPRESSWAY

PROJECT SCOPE

Introduction

The purpose of this document is to describe the scope of work and applicable standards to be provided by Kellogg Brown & Root, Inc. in the design and construction of Coalfields Expressway as proposed under the authority of the Virginia Public-Private Transportation Act of 1995. The Project shall begin near the town of Pound at the intersection with Route 23, generally east to the end of the project at the Virginia/West Virginia State Line.

Standards

Work required under this Contract shall be performed in accordance with the criteria contained in the following documents, which are incorporated by reference to this Project Scope.

Appalachian Regional Commission Code
AASHTO Guide for Design of Pavement Structures (Rigid Pavement and Flexible Pavement)
AASHTO Guide Specifications for Strength Design of Truss Bridges (Load Factor Design), 1986 Edition
Americans with Disabilities Act Accessibility Guidelines for State and Local Government Facilities
American Water Works Association Standards
FHWA Roadway Lighting Handbook, December 1978

The Illumination Engineering Society of North America, Roadway Lighting, RP-8-00
VDOT Drainage Manual, as adopted April 2002
VDOT Road and Bridge Specifications, 2002, as amended by the Special Provisions and Special Provision Copied Notes attached as Attachment D, hereto
VDOT Road and Bridge Standards, Volumes I and II, 2001 Edition
VDOT Structure and Bridge Division Manual, Volumes III and V
AASHTO Fracture Critical Non-Redundant Steel Bridge Members Current Spec.
VDOT Construction Manual, 1996 Version
VDOT Manual of Instruction Materials Division, 2001 Version
VDOT Inspection Manual, 2001 Edition
ANSI/AASHTO/AWS Bridge Welding Code D1.5

Project Description

The Project will be constructed in four sections as shown on the General Layout attached as Attachment A hereto, as follows:

Section A- Proposed U.S. 460 Connector Interchange west of Bull Gap to U.S 460 Interchange east of Harman Junction Section
B - Pound to Clintwood Section C - U.S. 460 Interchange east of Harman Junction to West Virginia State Line Section D - Clintwood to Proposed U.S. 460 Connector Interchange west of Bull Gap

Typical Roadway Section for Section A through Section D

The mainline typical section for Section A through Section D will feature two 12 feet wide travel lanes in each direction, separated by 5 feet paved inside shoulders and a concrete median barrier. The typical outside shoulder will be 14 feet wide in cut sections and fill sections where guardrail is not required, of which 12 feet shall be paved, and 17 feet wide in fill sections where guardrail is required, of which 12 feet shall be paved. In cut sections, a 16 feet wide foreslope will lead to a V-ditch with a 10-feet wide backslope.
The connector road typical section will feature one 12 feet wide travel lane in each direction. The typical outside shoulder will be 4 feet wide in cut sections and fill sections where guardrail is not required, and 7 feet wide in fill sections where guardrail is required. In cut sections, a 8 feet wide foreslope will lead to a V-ditch with an 8 feet wide backslope.

The ramp typical section will feature one 16 feet wide travel lane. The typical right shoulder will be 11 feet wide in cut sections and fill sections where guardrail is not required, of which 6 feet shall be paved, and 14 feet wide in fill sections where guardrail is required, of which 6 feet shall be paved. The typical left shoulder will be 6 feet wide in cut sections and fill sections where guardrail is not required, of which 3 feet shall be paved, and 9 feet wide in fill sections where guardrail is required, of which 3 feet shall be paved.

Section A - Proposed U.S. 460 Connector Interchange west of Bull Gap to U.S. 460 Interchange east of Harman Junction

Design and construction of a four lane section of the Coalfields Expressway beginning at new location, the Proposed U.S. 460 Connector Interchange west of Bull Gap and ending at the U.S. 460 Interchange east of Harman Junction. The total length of this section is approximately 8.30 miles. Design and construction of two-lane connectors beginning at the west terminus of Ramp B of the U.S. 460 Interchange to Route 609 near Bull Gap (0.66 mi) and beginning near the east end of Section A to U.S. Route 460 near Looney Creek and Route 656 (1.01 mi).

Design and construction of one-lane ramps at the Proposed U.S. 460 Connector Interchange west of Bull Gap, Ramps A, B, C, D, E, F, and G (3.77 mi) and the U.S. 460 Interchange east of Harman Junction, Ramps 1, 2, 3, 4 and 7 (2.12 mi).

Design and construction of a four lane section of U.S. Route 460 at the interchange with the Coalfields Expressway (1.52 mi).

U.S. Route 460

• Construct one bridge to carry U.S. Route 460 over Coalfields Expressway

U.S. 460 Interchange west of Bull Gap, Ramp C

• Construct one bridge to carry Ramp C over U.S. Route 460, Coalfields Expressway, Ramp A and Ramp E

Route 609

• Construct one bridge carrying Coalfields Expressway over Route 609 and Jess
Branch
  • Construct one bridge carrying Coalfields Expressway over Route 609, Bull Creek and Norfolk Southern Railway

Route 601
  • Construct one bridge carrying Coalfields Expressway over Route 601 and unnamed tributary to Deel Fork

Route 604
  • Construct one bridge carrying Coalfields Expressway over Route 604 and Poplar Creek

U.S. 460 Interchange east of Harman Junction, Ramp 4
  • Construct one bridge carrying Coalfields Expressway over Ramp 4

U.S. Route 460
  • Construct one bridge carrying Coalfields Expressway over U.S. Route 460, Levisa Fork, and Norfolk Southern Railway
  • Construct one bridge carrying Ramp 1, U.S. 460 Interchange east of Harman Junction over U.S. Route 460, Levisa Fork and Norfolk Southern Railway

Norfolk Southern Railway
  • Construct one bridge carrying Ramp 7, U.S. 460 Interchange east of Harman Junction over Levisa Fork and Norfolk Southern Railway
Section B - Pound to Clintwood

Design and construction of a four lane section of the Coalfields Expressway beginning at the intersection with U.S. Route 23 located 0.24 miles north of Route 23 Business north of Pound and ending at the intersection with Route 707 east of Clintwood near the Dickenson County Technology Park. The total length of this section is approximately 11.5 miles. Design and construction of two- lane connectors from the Coalfields Expressway to Route 631 in Wise County (0.4 mi.), from the Coalfields Expressway along Route 1025 and north to Route 83 (0.2 mi.), from the Coalfields Expressway to Route 72 southwest of Clintwood (0.3 mi.), and from the Coalfields Expressway to Route 83 southeast of Clintwood (0.5 mi.).

Route T-768 (Old Mill Village Road)

- Construct one bridge carrying Coalfields Expressway over Route T768 and the Pound River

Route 631

- Construct one bridge carrying Coalfields Expressway over Route 631 and Mill Creek

Route 83

- Construct one bridge carrying Coalfields Expressway over Route 83 and Georges Fork

Georges Fork

- Construct one bridge carrying Coalfields Expressway over Georges Fork

Route 621

- Construct one bridge carrying Coalfields Expressway over Route 621 and Georges Fork

Route 72

- Construct one bridge carrying Coalfields Expressway over Route 72 and Laurel Branch

Route 83

- Construct one bridge carrying Coalfields Expressway over Route 83 at Long Branch

Section C - U.S. 460 Interchange east of Harman Junction to West Virginia State Line

Design and construct a four lane section of the Coalfields Expressway beginning
at the endpoint of Section A and ending at the West Virginia State Line near Paynesville, West Virginia. The total length of this section is approximately 14.7 miles. Design and construction of a two-lane connector from the Coalfields Expressway to existing Route 643 (0.7 mi.).

**Route 656**

- Construct one bridge carrying Coalfields Expressway over Route 656 and Looney Creek

**New Wolfpen Branch**

- Construct one bridge carrying Coalfields Expressway over New Wolfpen Branch

**Route 677**

- Construct one bridge carrying Coalfields Expressway over Route 677 and Old Wolfpen Branch

**Route 642**

- Construct one bridge carrying Route 642 over Coalfields Expressway, including approximately 0.3 miles of roadway detour and approach work along Route 642

**Unnamed Tributary to Charles Fork**

- Construct one bridge carrying Coalfields Expressway over unnamed tributary to Charles Fork

**Route 643**

- Construct one bridge carrying Coalfields Expressway over Route 643

**Big Butt Branch**

- Construct one bridge carrying Coalfields Expressway over Big Butt Branch

**Dry Tripe Branch**

- Construct one bridge carrying Coalfields Expressway over Dry Tripe Branch

**Section D - Clintwood to Proposed U.S. 460 Connector Interchange west of Bull Gap**
• Design and construction of a four lane section of the Coalfields Expressway beginning at the end at Section B at Route 707 east of Clintwood and ending at the beginning of Section A. The total length of this section is approximately 15.3 miles. Design and construction of two-lane connectors from the Coalfields Expressway to existing Route 637 (0.2 mi.), from Coalfields Expressway to existing Route 2022 (0.2 mi.), from Coalfields Expressway to existing US 63 at Tarpon (0.5 mi.), from Coalfields Expressway to existing US 63 at Splashdam (0.9 mi.), and to existing US 80 from Coalfields Expressway to Haysi (0.3 mi.).

Holly Creek

• Construct one bridge carrying Coalfields Expressway over Holly Creek

Cranes Nest River

• Construct one bridge carrying Coalfields Expressway over Cranes Nest River

Unnamed Tributary to Honeycamp Branch

• Construct one bridge carrying Coalfields Expressway over unnamed tributary to Honeycamp Branch

Route 607

• Construct one bridge carrying Route 607 over Coalfields Expressway, including approximately 0.2 miles of roadway detour and approach work along Route 607

Private Road

• Construct one bridge to carry private road over Coalfields Expressway (Near Tarpon), including approximately 0.2 miles of roadway detour and approach work along Private Road

Presley Branch

• Construct one bridge carrying Coalfields Expressway over Presley Branch

Route 63

• Construct one bridge carrying Route 63 over Coalfields Expressway (near Splashdam), including approximately 0.3 miles of roadway detour and approach work along Route 63

Russell Fork

• Construct one bridge carrying Coalfields Expressway over Russell Fork, Route 613 and CSX Transportation Railroad
VA Byway Route 611

- Construct one bridge carrying Coalfields Expressway over VA Byway Route 611

Route 80

- Construct one bridge carrying Coalfields Expressway over Route 80 and Sugar Branch

Bart’s Lick

- Construct one bridge carrying Coalfields Expressway over Bart’s Lick
**Grade Separation / Stream Crossing Structures - Coalfields Expressway**

The dimensions shown herein are approximate and are subject to final design which is the responsibility of the Contractor in accordance with the Contract Documents.

<table>
<thead>
<tr>
<th>Location Description</th>
<th>APPROXIMATE Dimensions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Buchanan A</strong> US 460 over CFX</td>
<td>400' Width x 83' Height x 23' Length</td>
</tr>
<tr>
<td><strong>Buchanan A</strong> Ramp C over US Route 460, CFX, Ramp A &amp; Ramp E</td>
<td>1350 Width x 33' Height x 61' Length</td>
</tr>
<tr>
<td><strong>Buchanan A</strong> Over Route 609 &amp; Jess Branch</td>
<td>1135 Width x 83' Height x 240' Length</td>
</tr>
<tr>
<td><strong>Buchanan A</strong> Over Route 609 &amp; Bull Creek &amp; NS Railway</td>
<td>1165 Width x 83' Height x 260' Length</td>
</tr>
<tr>
<td><strong>Buchanan A</strong> Over Route 601 &amp; unnamed tributary to Deel Fork</td>
<td>1398 Width x 83' Height x 255' Length</td>
</tr>
<tr>
<td><strong>Buchanan A</strong> Over Route 604 &amp; Poplar Creek</td>
<td>1205 Width x 83' Height x 255' Length</td>
</tr>
<tr>
<td><strong>Buchanan A</strong> Over US. Route 460, Levisa Fork and Norfolk Southern Railway</td>
<td>1656 Width x 83' Height x 308' Length</td>
</tr>
<tr>
<td><strong>Buchanan A</strong> Ramp 7 over Levisa Fork &amp; NS Railway</td>
<td>900 Width x 33' Height x 107' Length</td>
</tr>
<tr>
<td><strong>Buchanan A</strong> Over T-768 &amp; Pound River</td>
<td>802' Width x 83' Height x 150' Length</td>
</tr>
<tr>
<td><strong>Buchanan B</strong> Over Route 631 &amp; Mill Creek</td>
<td>1102 Width x 83' Height x 1101' Length</td>
</tr>
<tr>
<td><strong>Dickenson B</strong> Over Route 83 at Georges Fork</td>
<td>935' Width x 83' Height x 130' Length</td>
</tr>
<tr>
<td><strong>Dickenson B</strong> Over Georges Fork</td>
<td>750' Width x 83' Height x 105' Length</td>
</tr>
<tr>
<td><strong>Dickenson B</strong> Over Route 621 &amp; Georges Fork</td>
<td>486' Width x 83' Height x 110' Length</td>
</tr>
<tr>
<td><strong>Dickenson B</strong> Over Route 72 &amp; Laurel Branch</td>
<td>455' Width x 83' Height x 85' Length</td>
</tr>
<tr>
<td><strong>Dickenson B</strong> Over Route 83 at Long Branch</td>
<td>840' Width x 83' Height x 95' Length</td>
</tr>
<tr>
<td><strong>Buchanan C</strong> Over New Wolfpen Branch</td>
<td>1100' Width x 83' Height x 200' Length</td>
</tr>
<tr>
<td><strong>Buchanan C</strong> Over Route 677 &amp; Old Wolfpen Branch</td>
<td>950' Width x 83' Height x 210' Length</td>
</tr>
<tr>
<td><strong>Buchanan C</strong> Route 642 over CFX</td>
<td>650' Width x 43' Height x 90' Length</td>
</tr>
<tr>
<td><strong>Buchanan C</strong> Over unnamed tributary to Charles Fork</td>
<td>1250 Width x 83' Height x 225' Length</td>
</tr>
<tr>
<td><strong>Buchanan C</strong> Over Route 643</td>
<td>1200 Width x 83' Height x 260' Length</td>
</tr>
<tr>
<td><strong>Buchanan C</strong> Over Big Butt Branch</td>
<td>1000 Width x 83' Height x 200' Length</td>
</tr>
<tr>
<td><strong>Buchanan C</strong> Over Dry Tripe Branch</td>
<td>800 Width x 83' Height x 90' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Over Holly Creek</td>
<td>1800 Width x 83' Height x 220' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Over Cranes Nest River</td>
<td>1800 Width x 83' Height x 250' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Over unnamed tributary to Honeycamp Branch</td>
<td>2000 Width x 83' Height x 100' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Route 607 over CFX</td>
<td>450 Width x 43' Height x 110' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Private Road over CFX (Near Tarpon)</td>
<td>510 Width x 43' Height x 130' Length</td>
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<tr>
<td><strong>Dickenson D</strong> Over Presley Branch</td>
<td>730 Width x 83' Height x 200' Length</td>
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<tr>
<td><strong>Dickenson D</strong> Route 63 over CFX (Near Splashdam)</td>
<td>650 Width x 43' Height x 175' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Over Russell Fork &amp; Route 613 &amp; CSX Transportation</td>
<td>1965 Width x 83' Height x 210' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Over VA Byway Route 611</td>
<td>800 Width x 83' Height x 100' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Over Route 80 at Sugar Branch</td>
<td>400 Width x 83' Height x 130' Length</td>
</tr>
<tr>
<td><strong>Dickenson D</strong> Over Bart's Lick</td>
<td>900 Width x 83' Height x 135' Length</td>
</tr>
</tbody>
</table>

**Environmental Regulations and Permits**

The Contractor shall obtain all Regulatory Approvals for the Project in accordance with Section 10.2 of the Design-Build Contract.
**Project Wide Clearances**

In general the Contractor shall provide the compensatory mitigation required to obtain the necessary Regulatory Approvals in accordance with the Contract Documents. Hazardous Material identified on any property is addressed in Section 6.5 of the Design-Build Agreement.

Contractor will be responsible for obtaining all necessary VPDES permits and maintaining all necessary documentation for the construction of this project. This includes Pollution Prevention Plans, weekly inspections of erosion and sediment controls, and post storm inspections.

The Contractor shall be responsible for conducting all necessary local, state, and FEMA floodplain studies for the completion of all sections of this Project.

The Project shall be built under the requirements of the U. S. Army Corps of Engineers (Corps) permits authorized under Section 401/404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, Virginia Water Protection Permit from Department of Environmental Quality and a Virginia Pollutant Discharge Elimination System Permit for Construction, and the Subaqueous Bed Permit from Virginia Marine Resources Commission.

The Permit Applications shall delineate all of the wetlands and other waters of the U. S. (WOUS) temporarily, adversely, or permanently impacted by construction of the Project, and provide appropriate mitigation as defined herein. Alternatives for providing mitigation sites by the Contractor include the following:

1. Contractor may provide mitigation sites where the Contractor requests and obtains acceptance of the mitigation site grading for wetlands and streams by the Corps and the DEQ. The Work shall include preparation of surveys, engineering, landscape plans and a water budget. The Contractor will monitor the wetland mitigation site(s) for the duration required by the permits. Upon the successful completion of the post construction monitoring of the mitigation site(s) by the Contractor and acceptance by the Corps and the DEQ, the mitigation site and the project permit(s) will be transferred to the Commonwealth.

2. Contractor may provide mitigation in approved wetland banks at the Contractor's cost,

3. Contractor may pay required fees to the Corps of Engineers for mitigation credits,

Contractor will be responsible for preparing and coordinating any changes to the NEPA document with the appropriate agencies, and developing a plan to ensure environmental commitments are implemented, including all associated cost. All FEIS and ROD commitments must be complied with during the development of the project. If the project is modified, or any commitment is not carried out as defined in the FEIS or ROD, the Contractor will be responsible for any additional required environmental documentation.
**Right-of-Way and Utilities**

Contractor will be responsible for acquiring the Project right-of-way and relocating existing utilities, in accordance with Articles 6 and 7 of the Design-Build Contract and the plans that are necessary for the construction. Contractor will be responsible for all utility adjustments resulting from construction easements, borrow sites, waste sites and staging areas or any deviation or modification of the design.

**Railroad Coordination**

The Contractor will be responsible for coordinating with the railroad companies affected by the project. This responsibility will include preparation of Exhibits and various technical documents to secure approval by the railroad companies as well as answering any technical questions during the design and construction process. VDOT will assist the Contractor.

**Maintenance-of-Traffic**

Maintenance-of-traffic shall conform to the approved Construction Traffic Management Plan as required by the Design-Build Contract, Article 9 and approved by the Chief Engineer of Program Development or his designated representative. Variances to the plan shall be requested at least one week prior to the need for approval by the Chief Engineer of Program Development or his designated representative.

No temporary lane restrictions shall take place between 12:00 noon on the Friday preceding and 12:00 noon the Tuesday following Memorial Day and Labor Day; or July 4 and Christmas Day if these holidays occur on Saturday or Sunday. No lane restrictions shall take place between 12:00 noon Wednesday preceding and 12:00 noon the Monday following Thanksgiving Day. All activities related to the Project that have an impact on the traveling public shall be performed in accordance with the Construction Traffic Management Plan to be developed by Contractor. Contractor shall provide temporary signage used during the construction of the Project that conforms to the Manual of Uniform Traffic Control Devices.

Coordination with other VDOT construction efforts in the area shall be coordinated through the Bristol District. The Coalfields Expressway shall have preference for lane closures required for the Project over separate contractors for concurrent construction projects in the Project area, unless determined by the Department to be an issue of life, limb, or injury.

Before the start of construction of any section, the Construction Traffic Management Plan for that section shall be developed by Contractor, which shall include an operational traffic analysis and proposed mitigation measures on the Project during the course of construction and their
interface with the connecting and adjacent public transportation facilities and State Highways. The Construction Traffic Management Plan shall set forth standards and procedures for designating each Construction Segment and shall initially identify each Construction Segment. Contractor may from time to time change the designation of Construction Segments provided the change conforms to such standards and procedures and Department has approved the change in writing. Department shall not unreasonably withhold or delay its approval. Each such change shall become effective when Department and Contractor execute a written amendment or supplement to the Construction Traffic Management Plan setting forth such change.

**Pavement**

The pavement sections to be provided for the Coalfields Expressway are as listed below:

**Mainline and Ramps**

- Asphalt Surface Course - 1 1/2" SM 12.5
- Asphalt Intermediate Course - 2" IM 19.OA
- Asphalt Base Course - 6" BM 25.0
- Aggregate Base Course - 8" 21B
- Aggregate Base Course - 12" #1 Stone

**Connection Pavement Section**

- Asphalt Surface Course - 1 1/2" SM 12.5
- Asphalt Base Course - 4" BM 25.0
- Aggregate Base Course - 6" 21B

**Mainline and Ramps Shoulder Pavement Section**

- Asphalt Intermediate Course - 2" IM 19.OA
- Asphalt Base Course - 4" BM 25.0
- Aggregate Base Course - Depth varies, 11 1/2" max. 21B
- Aggregate Base Course - 12" #1 Stone (daylight to roadside ditch)

**Signage**

Permanent Signs shall be a part of the Work under the Design-Build Contract to be furnished by the Contractor and shall include directional and enforcement signs. The sign plans shall be approved by the Chief Engineer of Program Development.

**Construction Schedule**

Schedule of Construction for Coalfields Expressway shall be as described in Articles 17 and 18 of the Design-Build Contract and each Section Supplement.

**Quality Assurance and Control**

Quality Assurance and Control Inspection Program shall be in accordance with...
Attachment B.

Plan Preparation and Plan Development

Plan preparation and plan development shall be in accordance with Attachment C.

Attachments:
A - General Layout showing different project Sections.
B - Quality Assurance and Control Inspection Program.
C - Plan Preparation and Plan Development.
D - Special Provisions and Special Provision Copied Notes to the Road and Bridge Specifications.
ATTACHMENT A TO APPENDIX 6

GENERAL LAYOUT

Attachment A is deleted and replaced by the following page.

DESIGN-BUILD CONTRACT
ATTACHMENT B TO APPENDIX 6

QUALITY ASSURANCE AND CONTROL INSPECTION PROGRAM

Attachment B is retained without modification.
ATTACHMENT C TO APPENDIX 6 PLAN PREPARATION AND PLAN DEVELOPMENT

Attachment C is retained with the following modification.

The description of the plan milestone for Construction Plans is deleted and replaced by:

CONSTRUCTION PLANS

This plan milestone includes plans that may be submitted as soon as sufficient information is available to develop Construction Plans for certain portions or elements of the project. These plans will be issued for construction following approval by the Department's of Program Development Engineer. The roadway or bridge plans may be submitted to VDOT in logical subsections (such as from bridge to bridge) and consisting of work packages such as 1) clearing and grubbing along with erosion and siltation control, 2) grading and drainage, 3) paving, and 4) traffic control. Individual bridge plans may be submitted to VDOT in logical components such as 1) foundation, 2) remaining substructure, and 3) superstructure. The Construction Plans are to contain all required information necessary to construct such portion or element of the project. Plan sheets containing summarized pay items are not required for this project.
ATTACHMENT D TO APPENDIX 6

INDEX TO SPECIAL PROVISIONS AND SPECIAL PROVISION COPIED NOTES

Attachment D is deleted and replaced by:

ATTACHMENT D TO APPENDIX 6
OF THE DESIGN-BUILD
CONTRACT

INDEX TO SPECIAL PROVISIONS
AND SPECIAL PROVISION COPIED
NOTES

The Special Provisions and Special Provision Copied Notes of the Virginia Department of Transportation Road and Bridge Specifications 2002, which are included in the index attached hereto, are incorporated herein by reference in full as they exist on the date hereof.

- Low Permeability Concretes.doc 7-1-98
- Rideability (South Dakota-Asphalt) 8-13-02.doc
- Sound Barrier Walls.doc 6-3-02.doc
- Retaining Walls.doc
- Post Tensioning Grout.doc

Low Permeability Concretes
Select Use Special Provision used on all concrete superstructures

Rideability (South Dakota-Asphalt) 8-13-02
Select Use Special Provision used in conjunction with Superpave Sound Barrier Walls 6-3-02

Retaining Walls
-Douglas 4-30-02
-Hilfiker Retaining Walls 4-30-02
-Isogrid Retaining Walls 4-30-02
-Reinforced Earth Walls 4-30-02
- Retained Earth Walls 4-30-02
-Tiedback Retaining Walls 7-30-98
-T-Wall Retaining Wall System 5-1-02
Select Use Special Provisions approved by Materials Division (For walls under probationary status contact Materials Division)

Post Tensioning Grout.doc Select Use Special Provision (Federal Projects)
AMENDMENT NO. 2
to the
COMPREHENSIVE AGREEMENT
for the
COALFIELDS EXPRESSWAY

This amendment No. 2 ("Amendment No. 2") is entered into by and between the Virginia Department of Transportation, a Department of the Commonwealth of Virginia ("VDOT") and Kellogg Brown & Root, Inc. ("KBR") in order to modify the Comprehensive Agreement to Develop and Maintain Coalfields Expressway ("CFX") dated January 11, 2002, ("the Agreement"), as amended by Amendment No. 1 dated September 3, 2002. The Agreement includes a Design/Build agreement for the construction of the Project: a 50 mile, four lane, primary highway through Wise, Dickenson and Buchanan counties to the eastern terminus at the West Virginia state border, following State Route 83 corridor through the area. The CFX will link with the West Virginia Coalfields Expressway near Paynesville, West Virginia (the "Project").

The changes agreed to by this Amendment No. 2 are time related only and non-compensatory. The changes are being made for the mutual benefit of KBR and VDOT for the satisfactory fulfillment of obligations as outlined in the Agreement and Amendment No. 1, specifically the timely submission by KBR to VDOT of any and all such information and or documentation essential for VDOT to make an adequate evaluation of the Fixed Price Amount and subsequent preparation by KBR of a definitive Plan of Finance, and approval by VDOT and FHWA of Section Completion Work for Section A of the Project. The changes on the pages following this signature page are hereby agreed to and incorporated into the Agreement. All capitalized terms used herein shall have the same meaning as the term in the Agreement. All sections of the Agreement not specifically modified by Amendment No. 1 or this Amendment No. 2 shall remain in full force and effect. In the event of a conflict between the language or provisions in the Agreement and this Amendment No. 2, the language and provisions in this Amendment No. 2 shall control.

VDOT and KBR accept this Amendment No. 1, and its terms and conditions on the following pages, as indicated by the authorized representative's signature below.

Virginia Department of Transportation
Authorized Signature
Kellogg Brown & Root, Inc.
Authorized Signature

Original with signatures on file in the Innovative Project Delivery Division.
AMENDMENT NO. 2
REVISIONS TO COMPREHENSIVE AGREEMENT
for the Coalfields Expressway dated January 11, 2002

The following sections of the Agreement and Amendment No.1 are modified as follows:

ARTICLE IV

Section 4.3 Milestones.

Paragraphs (a) through (d) are deleted and replaced by:

(a) Section A Milestones.

(i) Completion of the Baseline Engineering for Section A and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by November 7, 2004, a date which is twenty-six (26) months after the issuance of Notice to Proceed for Initial Engineering Work;

(ii) (A) the General Assembly shall have adopted legislation reasonably satisfactory to the Department evidencing intent of the General Assembly to make appropriations sufficient to support the Section A Plan of Finance and (B) CTB shall have taken action to update the VDOT Six-Year Improvement Program allocating funds to the Project as contemplated by the Section A Plan of Finance by, December 7, 2004, a date which is twenty-seven (27) months after issuance of the Notice to Proceed for Initial Engineering Work;

(iii) Acceptance by Department of a definitive Plan of Finance for the Section Completion Work for Section A, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available at the time or are reasonably expected to be available at the time required by the CPM/Payment Schedule, by December 7, 2004, a date which is twenty-seven (27) months after the issuance of the Notice to Proceed for Initial Engineering Work; and

(iv) Satisfaction of all other conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2. by December 7, 2004, a date which is twenty-seven (27) months after the issuance of the Notice to Proceed for Initial Engineering Work.

(b) Section B Milestones.

(i) After review of fixed price submission for the engineering required to develop the Construction Plans (as that item is defined in Attachment C to Appendix 6 in the
Design-Build Contract) for Section B and the Department's acceptance of such pricing, the Department shall issue a Notice to Proceed for Section B Construction Plans Work, such time being no later than twenty-six (26) months after issuance of the Notice to Proceed for the Initial Engineering Work;

(ii) Completion of the Baseline Engineering for Section B and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by a date which is twenty-nine (29) months after the issuance of Notice to Proceed for Section B Construction Plans Work;

(iii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms, by a date which is thirty (30) months after the issuance of the Notice to Proceed for Section B Construction Plans Work;

(iv) Acceptance by Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably expected to be available at the time required by the CPM/Payment Schedule, by a date which is thirty (30) months after the issuance of the Notice to Proceed for Section B Construction Plans Work;

and

(v) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2, by a date which is thirty (30) months after the issuance of the Notice to Proceed for Section B Construction Plans Work.

(c) Section C Milestones.

(i) After review of fixed price submission for the engineering required to develop the Construction Plans for Section C and the Department's acceptance of such pricing, the Department shall issue a Notice to Proceed for Section C Construction Plans Work, such time being no later than forty-one (41) months after issuance of the Notice to Proceed for the Initial Engineering Work;

(ii) Completion of the Baseline Engineering for Section C and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by a date which is thirty-three (33) months after the issuance of Notice to Proceed for Section C Construction Plans Work;

(iii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms;

(iv) Acceptance by the Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably
expected to be available the time required by the CPM/Payment Schedule;

and

(v) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2.

(d) Section D Milestones.

(i) After review of fixed price submission for the engineering required to develop the Construction Plans for Section D and the Department's acceptance of such pricing, the Department shall issue a Notice to Proceed for Section D Construction Plans Work, such time being no later than fifty-six (56) months after issuance of the Notice to Proceed for the Initial Engineering Work;

(ii) Completion of the Baseline Engineering for Section D and commencement of negotiations by the parties of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section, by a date which is thirty-three (33) months after the issuance of Notice to Proceed for Section D Construction Plans Work;

(iii) Acceptance by the Department of a Contract Price for Section Completion Work, CPM Payment Schedule and Guaranteed Completion Date for such Section and execution of a Section Supplement containing such terms;

(iv) Acceptance by the Department of a definitive Plan of Finance for the Section Completion Work for such Section, including a finding by the Commissioner or his designee that the funds identified in the Plan of Finance are available or are reasonably expected to be available the time required by the CPM/Payment Schedule;

and

(v) Satisfaction of all conditions precedent to the issuance of the Notice to Proceed as set forth in Section 4.2.