

FIRST AMENDMENT
TO
ASSIGNMENT AND ASSUMPTION
AGREEMENT

TO DEVELOP A LIMITED
FEASIBILITY STUDY
FOR
THE COALFIELDS EXPRESSWAY

DATED AS OF JANUARY 11, 2007

BY AND AMONG

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an Agency of the Commonwealth of Virginia

AND

ALPHA NATURAL RESOURCES, LLC

AND

PIONEER GROUP, INC.

This FIRST AMENDMENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of January 11, 2007, by and between the Virginia Department of Transportation, an Agency of the Commonwealth of Virginia ("Department" or "VDOT"), Alpha Natural Resources, LLC ("Alpha") and Pioneer Group, Inc. ("Pioneer") (Alpha and Pioneer are referred to individually and collectively as "Contractors" or "Contractor"), with reference to the following facts:

RECITALS

WHEREAS on or about January 11, 2002, the Department entered into a Comprehensive Agreement and a Design-Build Contract with Kellogg, Brown & Root, Inc. ("KBR") concerning the design, construction, warranty and maintenance of the Coalfields Expressway ("CFX") as a controlled access highway; and

WHEREAS on or about January 11, 2006, the Department, KBR, Alpha and Pioneer entered into an Assignment and Assumption Agreement pursuant to which KBR assigned all of its rights and obligations under said Comprehensive Agreement to Alpha and Pioneer, and Alpha and Pioneer assumed all of KBR's rights and obligations under said Comprehensive Agreement. For purposes of the Assignment and Assumption Agreement, the Comprehensive Agreement is defined to include the Design-Build Contract; and

WHEREAS Paragraph 2.2 of the Assignment and Assumption Agreement provides, among other things, that all of Contractors' obligations under the Comprehensive Agreement and Design-Build Contract shall be suspended in order to allow good faith negotiations between the Department and Contractors for the purpose of modifying the Comprehensive Agreement to reflect, among other things, the potential use of the value of Contractors' coal reserves to help offset CFX development costs; and

WHEREAS Paragraph 2.2 of the Assignment and Assumption Agreement provides the Department and Contractors up to 365 days from January 11, 2006 to negotiate modifications to the Comprehensive Agreement and Design-Build Contract; and

WHEREAS Contractors, based on extensive good faith reviews of the suspended Comprehensive Agreement and Design-Build Contract, have concluded that sufficient information relating to and necessary for the development of an alternative approach to constructing the CFX is not available at this time to allow the suspended Agreement to be modified in a manner that would provide the flexibility required to develop an approach necessary to reduce the costs associated with the development of the CFX; and

WHEREAS the Department and Contractors continue to agree that the timely completion of the CFX may be dependent on the development of an approach that makes use of the potential value of Contractors' coal reserves, and expertise in large-scale earth-moving operations used to recover these reserves, to substantially reduce the estimated cost of project development; and

WHEREAS the Department and Contractors are of the opinion that the development of an alternative alignment across reserve areas owned or controlled by Contractors in order to take advantage of the potential value of Contractors' coal reserves and expertise in recovering said reserves potentially to offset a portion of CFX development costs is unique and complies with the intent of the General Assembly as expressed in §56-558(A)(1-3) of the Public-Private Transportation Act of 1995 ("PPTA"); and

WHEREAS the Department and Contractors agree that such a unique approach warrants additional study to determine whether such an approach is feasible for use in developing the CFX; and

WHEREAS the Department and Contractors agree that if further study finds that such a unique construction approach is feasible, it may be the only presently viable method to develop the CFX in a timely and cost-effective manner; and

WHEREAS Department and Contractors agree that, because of the topographic characteristics of the area the CFX will traverse, the development (to rough grade) of the CFX roadbed represents the largest cost item for the entire project and the majority of the costs associated with developing rough grade (not to include subgrade materials or pavement) are associated with excavating the necessary earthen material to achieve rough grade; and

WHEREAS the Department and Contractors are of the opinion that a limited feasibility study ("Limited Feasibility Study" or "Study") identifying such costs would provide the Department with sufficient information to gain confidence that such a unique approach is feasible, if not the only viable approach, in the development of the CFX. The Limited Feasibility Study would include the development, by Contractors, of an alternative horizontal and vertical alignment traversing Contractors' coal reserve areas, an estimate of the quantity of earthen material required to be excavated in order to achieve rough grade, estimated costs to excavate said earthen material, and a conceptual plan for using the value of any marketable coal reserves recovered during the development of rough grade as an offset to CFX development costs; and

WHEREAS, the Department and Contractors agree that, if the Limited Feasibility Study results indicate that such an approach makes the project viable, it is expected that good faith negotiations on the suspended Comprehensive Agreement would resume seeking modifications based on the study's findings, subject to the availability of sufficient funding; and

WHEREAS, the Department and Contractors have agreed to extend the 365 calendar day period for negotiation of modifications to the Comprehensive Agreement established in Paragraph 2.2 of the Assignment and Assumption Agreement; and

WHEREAS, the Department and Contractors agree that conducting such a Limited Feasibility Study will require funding and that such funding may be available from the Transportation Partnership Opportunity Fund ("TPOF"); and

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

1. Limited Feasibility Study Description:

As conducted by the Contractors pursuant to this Agreement, each Contractor's Limited Feasibility Study will result in the development of the items specified by Sections 3 and 4 (the complete set of items specified by each of subsections (a), (b), and (c) of those Sections, being referred to as "Deliverables"), including a final set of Deliverables pursuant to Section 3(c) and 4(c) from each Contractor (such final Deliverable being referred to as the "Report"). Each Contractor's Report will include an alternative route of which sections generally traverse across areas of coal reserves owned or controlled by each Contractor and those items required herein by Section 3 and Section 4. For the purposes of the Study, the following criteria will apply:

- a. Location/General Alignment: The CFX will constitute a controlled access four lane, primary highway with a western terminus near Pound, Virginia, and proceeding through Wise, Dickenson and Buchanan counties to an eastern terminus at the West Virginia border. The CFX will link with the West Virginia Coalfields Expressway near Slate, Virginia. Sections of the proposed alignment will pass through areas of coal reserves owned or controlled by the respective Contractors, as well as the properties of third parties.
- b. Coordination: Contractors will coordinate with each other to identify where Alpha and Pioneer's individual sections intersect and to ensure that sections meet both horizontally and vertically so as to provide a contiguous roadbed.
- c. Design Criteria: Design speed is a determining factor for required roadway geometry, lane and shoulder widths, maximum degree of curvature and minimum sight distance. The design speed for this Limited Feasibility Study shall be 60-MPH and maximum vertical grade shall not exceed six percent (6%). Contractors will use applicable AASHTO and VDOT design criteria and guidelines for the referenced design speed and grade when developing the horizontal (including curvature) and vertical alignments for the Report. Contractors shall be permitted to propose deviations from the intended design speed and vertical grade as localized conditions and the feasibility and costs of overcoming such conditions warrants. For purposes of the Report, AASHTO and VDOT design criteria will only be considered in the design of

alternative route's horizontal and vertical alignments and not for the design of any other structures including but not limited to roadway embankments, surplus material locations, and cut-slope design.

- d. Standard of Care: Contractors shall furnish all work and services under this Agreement in accordance with applicable professional engineering practices generally accepted as standards of the industry in Virginia, in a good and workmanlike manner, and in accordance with the terms and conditions set forth in this Agreement.

- e. Use of Coal Reserves and Construction Techniques: The cost estimate for the excavation of earthen material provided in each Contractor's Report will assume certain modifications to Department construction Specifications, particularly, Specifications relating to the development of fills and embankments with the excavated material. The purpose of modifying such Specifications, where appropriate, is to incorporate construction techniques developed in other large scale earth-moving projects that have been found to equal or exceed Department Standards. Any such proposed modifications must be disclosed in the Report and shall be subject to Department and, if applicable, FHWA approval. If the Department and, if applicable, FHWA do not approve the disclosed modifications, the Contractors' cost estimates contained in the individual Reports will be substantially underestimated and not subject to the +/- 25% cost estimate standard contained in Section 3 and Section 4 of this document. Each Contractor's Report will also indicate how the recovery of coal reserves along the proposed alignment may be used to lower CFX development costs.

- f. Report Limitations: The Report will be limited to the items set forth above in this Section 1. It will not include a scope of work or cost estimates for the following:
 - engineering work for highway design including but not limited to cut-slope design, fill design, embankment design, drainage structure design, excavated material analyses, rock durability testing, stability design or any other engineering design work required by the Department prior to highway development,
 - placing subgrade material,
 - placing pavement,
 - installing drainage controls,

- mitigation development,
- signage installation,
- guard rail installation,
- super-elevation development,
- permitting and agency authorization or certification work,
- land acquisition,
- relocation work,
- bridge work and design,
- geotechnical analysis of the alternative route,
- identification and relocation of structures, utility lines including gas lines, purchase and abandonment of gas wells, provided however that Contractors shall identify structures, utility lines, gas lines and gas wells that are evident or visible from existing aerial surveys or otherwise known to Contractors,
- any other work associated with the development and construction of highways that is not specifically included in Section 1 above.

The Report will not include any work related to proposing, locating and/or designing any connector roads that do not currently exist.

2. Limited Feasibility Study Cost:

- a. Cost Sharing: In consideration for the Department's agreement to reimburse the Contractors for up to an aggregate amount of \$1.5 million from its TPOF grant monies available to develop the Limited Feasibility Study pursuant to this Agreement, Contractors agree to conduct the Study and to produce the Deliverables specified by this Agreement and to share in the costs of the Study by contributing an amount equal to 13% of the sum total of its expenses, not to exceed \$100,000.00 per each Contractor.
- b. Reimbursement Process: After a Contractor has presented each of its three sets of Deliverables to the Department pursuant to Sections 3 and 4, respectively, and its receipt of the Department's written notice indicating that the Deliverable is consistent with the scope of, and satisfies the applicable requirements of this Agreement, each Contractor shall submit its invoice for eligible costs incurred by it in connection with that Deliverable. The invoice shall be in a form and accompanied by supporting documentation acceptable to the Department, of each Contractor's eligible costs in an amount sufficient to support payment of the full amount of the invoice, as well as such lien waivers, releases and

other forms as may be required by the Department. For the purposes of this Agreement, eligible costs consist of costs incurred by the Contractor on or after January 11, 2006 for: (i) contract engineering and other support services; (ii) in-house engineering and other support services; (iii) and other services, including equipment rental and software, used to obtain necessary information for use in the Study. In addition to depicting the total costs incurred by Contractors to develop a Deliverable, each invoice shall illustrate a net sum equal to the gross total, minus a deduction of 13% of the gross total until such a time that the cumulative deduction equals \$100,000.00 per each Contractor, being the Contractor's agreed contribution toward the Study's costs. Department reimbursement obligation for eligible Contractor costs shall not exceed: (1) a net payment (i.e., total invoice amount less deduction for Contractor's share) of \$250,000 per invoice for each Contractor for the Phase 1 Deliverable; (2) a net payment (i.e., total invoice amount less deduction for Contractor's share) of \$250,000 per invoice increased by \$250,000 less the amount paid in (1) above for each Contractor for the Phase 2 Deliverable; (3) a net payment (i.e., total invoice amount less deduction for Contractor's share) of \$250,000 per invoice increased by \$500,000 less the amount paid in (1) and (2) above for each Contractor for the Phase 3 Deliverable; and (4) cumulative net payments of \$750,000 in aggregate amount per each Contractor pursuant to (1), (2) and (3) above.

Subject to the foregoing conditions, the Department shall pay the Contractor the amount of the approved invoice, in accordance with the requirements of the Virginia Prompt Payment Act, Sections §2.2-4347 through §2.2-4356 of the Code of Virginia.

3. Alpha's Limited Feasibility Study Scope of Work, Deliverables, Milestones and Payment:
 - a. Alpha Study Phase 1 Deliverable: On January 31, 2007, Alpha will develop and deliver to the Department schematic drawings and/or plans, depicting an initial horizontal alignment with the highway corridor stationed in 500-FT intervals, for an alternative route, much of which will traverse across properties containing coal reserves owned or controlled by Alpha. Alpha shall retain ownership of the Phase 1 Deliverable until such time as designated by Section 5(b), but will provide VDOT with two hard copies of the Deliverable, which shall not be reproduced by VDOT. VDOT shall then have ten (10) calendar days following receipt to review the Deliverable. VDOT shall record all notes and questions on one original hard copy of the Deliverable. A meeting between the

Department and Alpha, at an Alpha in-house location, shall be scheduled on the last day of the Department's review in order to brief the Department on the Phase 1 Deliverable, answer questions, and reconcile inconsistencies with the scope and requirements of this Phase 1 Deliverable. Following the review meeting, the Department shall have eleven (11) additional calendar days to review and analyze information obtained at the review meeting. At the end of the 11 day additional review period (21 calendar days total), the Department shall return all documents constituting the Phase 1 Deliverable to Alpha.

- i. Alpha's confidence level with the initial horizontal alignment will be approximately 50%, i.e., the alignment could shift substantially in any direction depending on information employed in subsequent iterations.
 - ii. Following Alpha's submission of its Phase 1 Deliverable to the Department for review, comment and consideration for approval, and receipt of the Department's written determination that the Deliverable is consistent with the scope and requirements of this Agreement, Alpha shall submit its invoice to the Department for reimbursement in accordance with Section 2(b).
- b. Alpha Study Phase 2 Deliverable: On March 19, 2007, Alpha will develop and deliver to the Department, schematic drawings and/or plans, depicting a refined horizontal alignment and a vertical alignment for the alternative route. Alpha shall retain ownership of the Phase 2 Deliverable until such time as designated by Section 5(b), but will provide VDOT with two hard copies of the Deliverable, which shall not be reproduced by VDOT. VDOT shall then have ten (10) calendar days following receipt to review the Deliverable. VDOT shall record all notes and questions on one original hard copy of the Deliverable. A meeting between the Department and Alpha, at an Alpha in-house location, shall be scheduled on the last day of the Department's review in order to brief the Department on the Phase 2 Deliverable, answer questions and reconcile inconsistencies with the scope and requirements of this Phase 2 Deliverable. Following the review meeting, the Department shall have eleven (11) additional calendar days to review and analyze information obtained at the review meeting. At the end of the 11 day additional review period (21 calendar days total), the Department shall return all documents constituting the Phase 2 Deliverable to Alpha.

- i. Alpha's confidence level with the subsequent horizontal alignment and the initial vertical alignment will be approximately 75%, i.e., the alignments submitted are not final and could still shift horizontally and vertically as more information, such as drilling, site surveys, and additional analyses becomes available as the result of additional design work performed after submission of the Phase 1 Deliverable.
 - ii. Following Alpha's submission of its Phase 2 Deliverable to the Department for review, comment and consideration for approval, and receipt of the Department's written determination that the Deliverable is consistent with the scope and requirements of this Agreement, Alpha shall submit its invoice to the Department for reimbursement in accordance with Section 2(b).
- c. Alpha Study Phase 3 Deliverable: On July 30, 2007, Alpha will develop and deliver to the Department a Report that will include, based on its alternative route, the following:
- i. Schematic drawings and/or plans, depicting horizontal and vertical alignments discussed in Section 3(b)(i) above, that are further refined so as to show the general limits of the Study corridor.
 - ii. Schematic drawings and/or plans depicting the point of intersection with the proposed alignment developed by Pioneer, pursuant to Section 4 of this Agreement, so as to ensure that the sections meet horizontally and vertically to provide a contiguous roadbed.
 - iii. Schematic drawings and/or Plans depicting the extent of the overall CFX development area (areas to be disturbed or impacted). The purpose of defining the overall development area is to provide a footprint for determining the type and extent of environmental reviews including permitting, authorizations, and certifications. The development area will include the following: approximate limits for all proposed borrow areas (primary and secondary), approximate limits of the highway corridor, approximate fill limits, approximate drainage structure limits, and approximate erosion control structure limits. The Schematic Drawings will not include areas disturbed or impacted for the purpose of mitigating stream impacts (mitigation sites).

- iv. Schematic drawings and/or plans depicting lands owned or controlled by Contractor, a general comparison (by percentage) of lands owned or controlled by Contractor and lands controlled by others, the number of structures (determined by reviewing mapping provided by the Department) that may require relocation, approximate right-of-way limits, and the perceived use (determined by reviewing mapping provided by the Department) of impacted lands, i.e., forestland, farmland, residential, commercial, or other use.
- v. Schematic drawings and/or plans depicting at-grade intersections of existing crossroads (determined by reviewing mapping provided by the Department). No plans or costs for incorporating existing crossroads into the proposed alignment will be included in this Report.
- vi. An estimate, with a confidence level of 75%, i.e., +/- 25%, of the amount of earthen material (measured in cubic yards) required to be excavated for development, to rough-grade, of Alpha's portion of the alternative route (for this Report, rough grade is the road-bed's elevation prior to placement of subgrade material and pavement).
- vii. An estimate of the number, general location and approximate length of major drainage structures such as, among other things, box culverts and bridges proposed for the alternative route (no costs or designs will be provided).
- viii. Description and locations where fills may be utilized in lieu of bridges or box culverts and a summary of the bridges, box culverts and other drainage structures that were eliminated by fills.
- ix. A plan as to how the recovery of coal reserves may be used to lower CFX development costs.
- x. Typical cross-sections at key locations including fills and cuts, but cross-sections will not be included for bridges.
- xi. Schematic drawings and/or Plans depicting utility lines, gas lines and gas wells that are evident or visible from mapping provided by the Department or otherwise known to Contractors.

- xii. A brief narrative providing an approximate percentage of the right-of-way and mineral rights controlled by each Contractor along their proposed alignments.
 - xiii. A brief narrative describing anticipated environmental permit and regulatory requirements to develop the proposed alignment.
- d. Deliverable Format: Alpha shall retain ownership of the Phase 3 Deliverable until such time as designated by Section 5(b), but will provide VDOT with two hard copies of the Deliverable, which shall not be reproduced by VDOT. VDOT shall then have ten (10) calendar days following receipt to review the Deliverable. VDOT shall record all notes and questions on one original hard copy of the Deliverable. A meeting between the Department and Alpha, at an Alpha in-house location, shall be scheduled on the last day of the Department's review in order to brief the Department on the Phase 3 Deliverable, answer questions and reconcile inconsistencies with the scope and requirements of this Phase 3 Deliverable. Following the review meeting, the Department shall have eleven (11) additional calendar days to review and analyze information obtained at the review meeting. At the end of the 11 day additional review period (21 calendar days total), the Department shall return all documents constituting the Phase 3 Deliverable to Alpha.

Within fourteen (14) calendar days of the return of the Deliverable, Alpha will resolve any and all outstanding issues or deficiencies identified by the Department relating to the Limited Feasibility Study and the Report.

- i. Following Alpha's submission of its Phase 3 Deliverable to the Department for review, comment and consideration for approval, and receipt of the Department's written determination that the Deliverable is consistent with the scope and requirements of this Agreement and that Alpha has resolved all outstanding issues and deficiencies in the Study and the Report, Alpha shall transfer ownership and title to all Deliverables to the Department by the execution and delivery of such instruments as the Department requires and shall deliver possession of such Deliverables to the Department in accordance with Section 5(b). Thereafter, Alpha shall submit its final invoice to the Department for reimbursement in accordance with Section 2(b).

4. Pioneer Limited Feasibility Study Scope of Work, Deliverables, Milestones and Payment:

- a. Pioneer Study Phase 1 Deliverable: On or before January 31, 2007, Pioneer will develop and deliver to the Department schematic drawings and/or plans, depicting an initial horizontal alignment with the highway corridor stationed in 500-FT intervals, for an alternative route, much of which will traverse across properties containing coal reserves owned or controlled by Pioneer. Pioneer shall retain ownership of the Phase 1 Deliverable until such time designated by Section 5(b), but will provide VDOT with two hard copies of the Deliverable, which shall not be reproduced by VDOT. VDOT shall then have ten (10) calendar days following receipt to review the Deliverable. VDOT shall record all notes and questions on one original hard copy of the Deliverable. A meeting between the Department and Pioneer, at a Pioneer in-house location, shall be scheduled on the last day of the Department's review in order to brief the Department on the Phase 1 Deliverable, answer questions, and reconcile inconsistencies with the scope and requirements of this Phase 1 Deliverable. Following the review meeting, the Department shall have eleven (11) additional calendar days to review and analyze information obtained at the review meeting. At the end of the 11 day additional review period (21 calendar days total), the Department shall return all documents constituting the Phase 1 Deliverable to Pioneer.
 - i. Pioneer's confidence level with the initial horizontal alignment will be approximately 50%, i.e., the alignment could shift substantially in any direction depending on information used in subsequent iterations.
 - ii. Following Pioneer's submission of its Phase 1 Deliverable to the Department for review, comment and consideration for approval, and receipt of the Department's written determination that the Deliverable is consistent with the scope and requirements of this Agreement, Pioneer shall submit its invoice to the Department for reimbursement in accordance with Section 2(b).
- b. Pioneer Study Phase 2 Deliverable: On or before March 19, 2007, Pioneer will develop and deliver to the Department schematic drawings and/or plans, depicting a refined horizontal alignment and a vertical alignment for the alternative route. Pioneer shall retain ownership of the Phase 2 Deliverable until such time as designated by Section 5(b), but will provide VDOT with two hard copies of the Deliverable, which shall not be reproduced by

VDOT. VDOT shall then have ten (10) calendar days following receipt to review the Deliverable. VDOT shall record all notes and questions on one original hard copy of the Deliverable. A meeting between the Department and Pioneer, at a Pioneer in-house location, shall be scheduled on the last day of the Department's review in order to brief the Department on the Phase 2 Deliverable, answer questions, and reconcile inconsistencies with the scope and requirements of this Phase 2 Deliverable. Following the review meeting, the Department shall have eleven (11) additional calendar days to review and analyze information obtained at the review meeting. At the end of the 11 day additional review period (21 calendar days total), the Department shall return all documents constituting the Phase 2 Deliverable to Pioneer.

- i. Pioneer's confidence level with the subsequent horizontal alignment and the initial vertical alignment will be approximately 75%, i.e., the alignments submitted are not final and could still shift horizontally and vertically as more information, such as drilling, site surveys, and additional analyses becomes available as the result of additional design work performed after submission of the Report.
 - ii. Following Pioneer's submission of its Phase 2 Deliverable to the Department for review, comment and consideration for approval, and receipt of the Department's written determination that the Deliverable is consistent with the scope and requirements of this Agreement, Pioneer shall submit its invoice to the Department for reimbursement in accordance with Section 2(b).
- c. Pioneer Study Phase 3 Deliverable: On or before July 30, 2007, Pioneer will develop and deliver to the Department a Report that will include the following:
- i. Schematic drawings and/or plans depicting horizontal and vertical alignments discussed in item 4(b)(i) above that are refined so as to show the general limits of the Study corridor.
 - ii. Schematic drawings and/or plans depicting the point of intersection with the proposed alignment developed by Pioneer, pursuant to Section 4 of this Agreement, so as to ensure that the sections meet horizontally and vertically to provide a contiguous roadbed.

- iii. Schematic drawings and/or Plans depicting the extent of the overall CFX development area (areas to be disturbed or impacted). The purpose of defining the overall development area is to provide a footprint for determining the type and extent of environmental reviews including permitting, authorizations, and certifications. The development area will include the following: approximate limits for all proposed borrow areas (primary and secondary), approximate limits of the highway corridor, approximate fill limits, approximate drainage structure limits, and approximate erosion control structure limits. The Schematic Drawings will not include areas disturbed or impacted for the purpose of mitigating stream impacts (mitigation sites).
- iv. Schematic drawings and/or plans depicting lands owned or controlled by Contractor, a general comparison (by percentage) of lands owned or controlled by Contractor and lands controlled by others, the number of structures (determined by reviewing mapping provided by the Department) that may require relocation, approximate right-of-way limits, and the perceived use (determined by reviewing mapping provided by the Department) of impacted lands, i.e., forestland, farmland, residential, commercial, or other use.
- v. Schematic drawings and/or plans depicting at-grade intersections of existing crossroads (determined by reviewing mapping provided by the Department). No plans or costs for incorporating existing crossroads into the proposed alignment will be included in this Report.
- vi. An estimate, with a confidence level of 75%, i.e., +/- 25%, of the amount of earthen material (measured in cubic yards) required to be excavated for development, to rough-grade, of Alpha's portion of the alternative route (for this Report, rough grade is the road-bed's elevation prior to placement of subgrade material and pavement).
- vii. An estimate of the number, general location and approximate length of major drainage structures such as, among other things, box culverts and bridges proposed for the alternative route (no costs or designs will be provided).
- viii. Description and locations where fills may be utilized in lieu of bridges or box culverts and a summary of the bridges,

box culverts and other drainage structures that were eliminated by fills.

- ix. A plan as to how the recovery of coal reserves may be used to lower CFX development costs.
 - x. Typical cross-sections at key locations including fills and cuts, but cross-sections will not be included for bridges.
 - xi. Schematic drawings and/or Plans depicting utility lines, gas lines and gas wells that are evident or visible from mapping provided by the Department or otherwise known to Contractors.
 - xii. A brief narrative providing an approximate percentage of the right-of-way and mineral rights controlled by each Contractor along their proposed alignments.
 - xiii. A brief narrative describing anticipated environmental permit and regulatory requirements to develop the proposed alignment.
- d. Deliverable Format: Pioneer shall retain ownership of the Phase 3 Deliverable until such time as designated by Section 5(b), but will provide VDOT with two hard copies of the Deliverable, which shall not be reproduced by VDOT. VDOT shall then have ten (10) calendar days following receipt to review the Deliverable. VDOT shall record all notes and questions on one original hard copy of the Deliverable. A meeting between the Department and Pioneer, at a Pioneer in-house location, shall be scheduled on the last day of the Department's review in order to brief the Department on the Phase 3 Deliverable, answer questions, and reconcile inconsistencies with the scope and requirements of this Phase 3 Deliverable. Following the review meeting, the Department shall have eleven (11) additional calendar days to review and analyze information obtained at the review meeting. At the end of the 11 day additional review period (21 calendar days total), the Department shall return all documents constituting the Phase 3 Deliverable to Pioneer.

Within fourteen (14) calendar days of the return of the Deliverable, Pioneer will resolve any and all outstanding issues and deficiencies identified by the Department relating to the Limited Feasibility Study or the Report.

- i. Following Pioneer’s submission of its Phase 3 Deliverable to the Department for review, comment and consideration for approval, and receipt of the Department’s written determination that the Deliverable is consistent with the scope and requirements of this Agreement and that Pioneer has resolved all outstanding issues and deficiencies in the Study and the Report Pioneer shall transfer ownership and title to all Deliverables to the Department by the execution and delivery of such instruments as the Department requires and shall deliver possession of such Deliverables to the Department in accordance with Section 5(b). Thereafter, Pioneer shall submit its final invoice to the Department for reimbursement in accordance with Section 2(b).

5. Work Product:

- a. Work Product Defined: The term “Work Product” is intended to include the Limited Feasibility Study and the Report, including the Deliverables described by Sections 3 and 4, whether in paper copy or electronic format.
- b. Ownership of Work Product: Contractors shall retain ownership of all Work Product until the earlier of the following dates, at which time ownership shall vest solely in the Department, free and clear of all claims, liens and encumbrances:
 - i. The date on which the Department has provided written determination to the Contractor that its Phase 3 Deliverable is consistent with the scope and requirements of this Agreement and all outstanding issues or deficiencies in the Study and Report of such Contractor have been resolved; or
 - ii. The date on which this Agreement is terminated, for any reason.

At such date, the Contractors shall execute and deliver such assignments and other instruments as the Department may require to transfer ownership of the Work Product to the Department and shall deliver possession of all such Work Product to the Department.

- c. Public Disclosure: Each of the Contractors believes its Deliverables under this Agreement may constitute trade secrets under Section 59.1-336 of the Code of Virginia (the “Code”) and/or other information the public disclosure of which would

adversely affect their financial interests, which information is exempt from public disclosure under Section 2.2-3705.6.11 of the Code. The Department has insufficient information as of the date of this Agreement to determine whether such position is correct. However, the parties acknowledge and agree that, by virtue of payments made by the Department to the Contractors pursuant to this Agreement, the Department shall acquire full possession, ownership and title to the Deliverables and all Work Product, as defined in Section 5(a), produced pursuant to this Agreement, whether or not this Agreement is terminated for any reason, in accordance with Section 5(b).

- d. Use of Work Product at the Department's Risk: The Department's use of the Work Product, without Contractors' input, on this project or any subsequent procurement by the Department on another project shall be at the Department's sole risk. By this Agreement, Contractors neither warrant nor represent that the Work Product is suitable for use in the development of the CFX, or another project, without Contractors' input or modification. The Department waives any rights to seek recovery from Contractors for any claims, damages, liabilities, losses and expenses arising out of or resulting from the Department's use of the Work Product in the development of the CFX, or another project, without Contractors' input.

6. Limited Feasibility Study Purpose:

The purpose of the Limited Feasibility Study is to provide the Department with sufficient information to make a determination as to the feasibility of using an alternative approach to develop the CFX. If the Department determines that Contractor's unique development approach is feasible for use in developing the CFX, the Department and Contractors will resume negotiations to either modify the suspended Comprehensive Agreement or to enter into an appropriate agreement that will bring about the timely development of the CFX.

7. Confidentiality:

Contractors, individually and collectively, have advised the Department that proprietary information will be used in the development of the Limited Feasibility Study. Such proprietary information may include, but is not limited to, information or data regarding coal reserves, mining methods, mining models, business models, sales contracts, purchasing models, intellectual properties, financial statements, balance sheets, financial information and other such information. The Contractors believe that such information and data used to develop the Limited Feasibility

Study is proprietary and constitutes trade secrets under Section 59.1-336 of the Code and/or other information the disclosure of which would adversely affect their financial interests, and as such will not be included in the Limited Feasibility Study and Report.

If Contractors believe that any Work Product, Deliverables or any document subject to transmittal to VDOT 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 public disclosure pursuant to Commonwealth law, the Contractors shall comply with applicable provisions of the Virginia Freedom of Information Act, including without limitation Virginia Code §2.2-3705.6 or any successor thereto then in effect, in connection with transmittal of such information to VDOT. In no event, however, shall VDOT be liable to Contractors as a result of any disclosure of such records by VDOT in compliance with the provisions of applicable law

8. Contractors Responsibilities:

Excluding the aerial photogrammatic survey data requested by and provided to Contractors by the Department, Contractors shall obtain all information and data, without reliance on the Department for any such data or information, necessary to conduct the Limited Feasibility Study and will conduct the Study and develop the Report in accordance with generally accepted engineering principles and practices used to analyze large scale earth-moving projects.

9. Project Management:

Contractors are individually responsible for the development of the Limited Feasibility Study and the timely submission of the Deliverables and the Report.

10. Record Maintenance and Retention of Records:

Contractors shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, so as to provide appropriate records of costs and expenses for which they are to be reimbursed pursuant to this Agreement. During the performance of the work and for a period of three (3) years after final payment, Department and Department's accountants shall be afforded access from time-to-time, upon reasonable notice, to Contractors' records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data, including, but not limited to, electronic schedules and other electronic data (all collectively referred to

as “Books and Records”) relating to such reimbursable costs and expenses. Contractors shall preserve all of their Books and Records for such period.

11. Changes in Work:

This Agreement is limited to the development by Contractors of a Limited Feasibility Study and Report as described in this Agreement. Any expansion or changes to the Study’s scope will be requested by the Department and Contractors agree to negotiate such a request with the Department. Such a change would be subject to terms and conditions developed in a negotiated supplement to this Agreement.

12. Default:

The term, for purposes of this Agreement, “Event of Default” shall mean the failure of the Department, Alpha, or Pioneer to fulfill its respective individual obligations described in this Agreement. An Event of Default will be treated as a breach of the Agreement and considered disruptive to the development of the Limited Feasibility Study.

- a. Department Default: Because of the limited nature of this Agreement, an Event of Default by the Department shall mean the failure to accept, and reimburse Contractors for, Phase Deliverables in accordance with this Agreement.
- b. Contractors Default: An Event of Default by Contractors shall mean: the failure to develop and provide the Department with the timely Phase Deliverables described in this Agreement or to otherwise perform their obligations under this Agreement.
- c. Default Resolution: In the case of an Event of Default by a party to this Agreement, the defaulting party, upon receipt of written notification from the non-defaulting party, will have 10 days to cure any breach resulting in an Event of Default. If breach cannot be cured in 10 days because of circumstances beyond the control of the defaulting party, an additional period of time may be allowed as may be reasonably necessary to cure the breach. If the breach cannot be cured, the non-defaulting party shall be allowed to submit a claim for dispute resolution, to terminate this Agreement by delivery of notice to all of the other parties, or to pursue all other available legal and equitable remedies subject to the limitations set forth in Section 12(d). During the default resolution process, including dispute resolution, all parties shall continue to perform under the terms and conditions of this Agreement. For the purposes of this Section 12(c), it is understood

and agreed that only the Department may give notice and pursue resolution and remedies with respect to Events of Default by either Contractor, and that a Contractor may give notice and pursue resolution and remedies only with respect to the Events of Default by the Department.

- d. The Department and Contractors mutually waive and release any and all right they might otherwise have under law or equity to recover indirect, incidental or consequential damages of any nature, whether arising in contract, tort or any other legal theory. In no event shall the total liability of the Department, including payments made or payable under this Agreement, exceed: (i) \$750,000 to Alpha; and (ii) \$750,000 to Pioneer.

13. Dispute Resolution:

Unresolved claims arising from the performance requirements of this Agreement shall be subject to the following dispute resolution process: The Commissioner of the Department shall be designated as arbitrator and the harmed party shall notify the Commissioner in writing within fourteen (14) days of submitting a claim for resolution. The notification shall express the harmed party's desire to have both parties appear before the Commissioner for purposes of resolving the dispute. The Commissioner will schedule and meet with the parties within thirty (30) days after receiving the request. Within fourteen (14) days from the date of the meeting, the Commissioner will investigate the claim, including any additional facts presented, and notify the parties of his decision. 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 harmed party subject to the provisions Section 2.2-514 of the Code of Virginia (1950) as amended. If dissatisfied with the decision, the harmed party shall be entitled to institute judicial review if such action is brought within six (6) months of receipt of the Commissioner's written decision. Any civil action by the Contractor shall be subject to the provisions of Section 2.2-4363 (D) of the Code of Virginia (1950) as amended.

14. Termination for Public Convenience and Suspension of All or Part of Work:

- a. The Department may terminate for public convenience the rights and obligations conveyed or required by all or part of this Agreement at any time prior to approval of the Phase 3 Deliverable by giving written notice of the termination to Contractors. Upon receiving such notification, Contractors shall promptly stop work. In such event, Contractors shall be paid amounts due for work performed prior to the date of the termination under the terms of

this Agreement including their reasonable costs incurred on any Phase Deliverable commenced but not completed provided however that in no event shall the payment exceed the amount that would be due if the Deliverable had actually been completed. In no event shall the Contractors or any third parties be entitled to recover anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or indirect, incidental or consequential damages.

- b. The Department may suspend all or part of the performance of this Agreement at any time by giving written notice of the suspension to Contractors. Any suspension ordered by the Department will be considered a Study delay and, because of such a delay, any remaining Phase Deliverable dates will be suspended as well. The Department and Contractors will negotiate new dates for submission of any remaining Phase Deliverables and Report.
- c. Upon receipt of written notice terminating all or part of this Agreement, Contractors shall transfer and deliver to Department, in accordance with Section 5(b), possession, control, and all right, title and interest to the Work Product, including any Work Product in process for the work terminated.

15. Compliance and Indemnity:

- a. Compliance with Law: Contractors and the Department agree to conform to the laws of the Commonwealth of Virginia and to all other legal requirements whether or not mentioned or specified in this Agreement.
- b. Insurance: Contractors shall furnish the Department, within fourteen days of Agreement execution, a certificate evidencing comprehensive commercial general liability insurance in an amount acceptable to the Department and Contractors agree to maintain this amount throughout the life of this Agreement.

Contractors shall provide the Department with a certificate evidencing worker's compensation insurance as required by law by an insurer authorized to transact the business of worker's compensation insurance in this Commonwealth or in compliance with Section 65.2-801 of the Code of Virginia (1950), as amended, and agree to maintain this amount through the life of this Agreement.

In the event of a non-renewal or cancellation of such required insurance coverage, thirty (30) days written notice must be given to the Department prior to such non-renewal or cancellation. Certificates evidencing insurance shall be submitted annually to the Department.

- c. Indemnification: Contractors agree, subject to conditions contained in Section 5(d) of this Agreement and to the maximum extent allowed by law, to indemnify, protect, defend, hold harmless and release the Commonwealth, its agencies and their respective officers, employees and agents (each a “State Indemnitee”) from and against all third party claims arising from Contractors’ work described in this Agreement. Contractors’ indemnity excludes the portion of liability that is attributable to the negligence of a State Indemnitee or to a deficiency in a required Department standard which the Contractor relied on. The provisions of this Section 15(c) shall survive the expiration or termination of this Agreement for any reason.

- d. Contracting Practices: Where it may be practicable for any of the work required by this Agreement to be contracted to other suppliers, Contractors are encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses certified by Virginia Department of Minority Business Enterprises. If SWAM contractors are used, Contractors agrees to report the use of SWAM contractors by providing the Department at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided. <http://www.dmb.state.va.us/>

16. Designation of Representative:

Each of the parties to this Agreement designate: (1) the individuals identified below as that party’s representative, who shall be authorized to make decisions on behalf of, and to bind that party, on matters relating to this Agreement and to whom any required notices shall be directed; and (2) such other individuals, if any, to whom such notices should be delivered on behalf of that party. A party may designate additional or alternative representatives and/or notice recipients, by delivery of prior notice to the other parties. A party may also designate technical representatives who shall be authorized to investigate, negotiate, and report on behalf of each of that party, but who do not have the authority to enter into binding agreements, which individuals are either specified below or shall be identified by subsequent notice to the other parties.

Alpha:

Vaughn R. Groves
Alpha Natural Resources, LLC
One Alpha Place
P.O. Box 2345
Abingdon, VA 24211
Facsimile 276-623-4321

With copy to:

Michael Castle
131 Summit Ridge Road
Hurricane, WV 25526
Facsimile 304- 757-2956

Pioneer:

Clyde Stacy
55 Terrace Drive
Bristol, VA 24202
Facsimile (276) 669-2671

With copy to:

Brian D. Sullivan, Esq.
United Coal Company
1005 Glenway Ave.
Bristol, VA 24201
Facsimile (276) 645-1431

The Department:

Julie M. Smith, PMP
CFX Project Manager
Virginia Department of Transportation
CFX Project Office
P.O. Box 2008
Grundy, VA 24614
Facsimile: (276) 935-1664

With copies to:

Mr. James S. Givens
District Administrator
Virginia Department of Transportation
P.O. Box No. 1768
807 Bonham Road
Bristol, VA 24203
Facsimile: (276) 645-1682

Mr. Malcolm T. Kerley, PE
Chief Engineer
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23218

Ann R. Purdue, Esq.
Senior Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
Facsimile: (804) 786-9136

17. Notification Procedures:

All notifications, approvals, consents, and determinations referenced in this Agreement shall be in writing, shall be sent to the individuals designated pursuant to Section 16 of this Agreement, by personal delivery, first class U.S. mail (postage prepaid), nationally recognized overnight courier service, or facsimile transmission to such individual (with confirmation of delivery), at the address or facsimile number provided for that individual pursuant to Section 16, and shall be deemed given or delivered when received by the recipient. Deliverables shall be delivered by any of the same means, except facsimile, shall be delivered by the Contractors to the Department's designated representative only, and shall be deemed delivered when received.

- a. 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 and timely, except as otherwise expressly provided by this Agreement.
- b. Other Correspondence and Communications: The parties shall notify the other parties prior to the submission of any written correspondence to any representative of the media, or to a third

party for the purpose of publication to the general public. Such communications may include, but is not limited to, a press release, an opinion document, or other similar instrument.

18. Assignment:

Contractor may not assign or otherwise transfer, directly or indirectly, by operation of law or otherwise, this Agreement, in whole or in part, without the prior written consent of the Department, which consent may be not be unreasonably withheld. Notwithstanding the foregoing, Pioneer shall submit to the Department no later than the date of execution of this Agreement, a letter (a "Contractor Assignment Letter") describing: (i) the relationship between Pioneer and United Coal Company, LLC ("United Coal"), including the rights between Pioneer and United Coal concerning mineral ownership in the CFX corridor; and (ii) the form of transaction by which Pioneer anticipates assigning its rights and obligations under this Agreement to United Coal or one of its wholly owned affiliates. Similarly, Alpha shall submit to the Department no later than the date of execution of this Agreement a letter describing the rationale for assigning its rights and obligations hereunder to a wholly owned subsidiary of Alpha and other relevant details. Provided that the Department does not object in writing within 5-business days of receipt of each Contractors Assignment Letter, each Contractor shall be permitted with prior notice to the Department, thereafter to assign its rights and obligations in the manner set forth in the Contractor Assignment Letters. The Department shall retain its right to object to and deny attempts to assign by either Contractor in a manner inconsistent with the circumstances set forth in the approved Contractor Assignment Letters. Any other assignment or transfer of this Agreement without such consent in writing shall be absolutely void, and at the option of the Department, this Agreement as it pertains to the Contractor failing to obtain written consent, may be terminated. Subject to this section, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.

19. Assignment and Assumption Agreement Time Extension:

Department and Contractor hereby agree to amend the third sentence of Paragraph 2.2 of the Assignment and Assumption Agreement to replace the reference to 365 days with a reference to January 30, 2008.

20. Governing Law and Venue:

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Venue for any legal action

arising out of or relating to this Agreement shall lie in the Circuit Court of the City of Richmond, Virginia.

21. No Third Party Beneficiaries:

Nothing contained in this Agreement is intended to or shall be construed to create or confer any rights, benefits or remedies upon, or create any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

22. Entire Agreement:

THIS FIRST AMENDMENT TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT CONSTITUTES 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.

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

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“Department”

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an Agency of the Commonwealth of Virginia

By: Original Signature on File
David S. Ekern, PE
Commonwealth Transportation Commissioner

“Contractors”

ALPHA NATURAL RESOURCES, LLC
a Delaware Limited Liability Company

By: Vaughn R. Groves
Original Signature on File
Its: Vice President

PIONEER GROUP, INC.
a Virginia corporation

By: Clyde Stacy
Original Signature on File
Its: President