THIRD AMENDMENT

TO

ASSIGNMENT AND ASSUMPTION AGREEMENT

DATED AS OF DECEMBER 5, 2011

BY AND AMONG

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

AND

ALPHA NATURAL RESOURCES, LLC

AND

RAPOCA ENERGY COMPANY, formerly known as PIONEER GROUP, INC.
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## EXHIBITS

- Exhibit 1 Geographical Delineation Map
- Exhibit 2 Specifications Guidelines
- Exhibit 3 Minimum Design Criteria
- Exhibit 4 Scope of Work
- Exhibit 5 Department Oversight Plan
- Exhibit 6 Minimum Insurance Requirements
This **THIRD AMENDMENT TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “Amendment”) is made and entered into as of December 5, 2011, by and between the Virginia Department of Transportation (the “Department”), an agency of the Commonwealth of Virginia (the “Commonwealth”), Alpha Natural Resources, LLC (“Alpha”), and Rapoca Energy Company, formerly known as Pioneer Group, Inc., (“Rapoca”) (Alpha and Rapoca are referred to individually or collectively as the “Contractor” or the “Contractors”), with reference to the following facts:

**RECITALS**

**WHEREAS,** pursuant to the Public-Private Transportation Act of 1995 (the “PPTA”), §§56-556, *et seq.*, of the Code of Virginia (1950), as amended (the “Code”), the Department and Kellogg, Brown and Root (“KBR”) executed (i) a Comprehensive Agreement (the “Comprehensive Agreement”) dated January 11, 2002, concerning the design, construction and maintenance of a controlled access highway called the Coalfields Expressway (the “Project”) and (ii) a Design-Build Contract (the “Design-Build Contract”) dated January 11, 2002, concerning the Project;

**WHEREAS,** on January 11, 2006, the Department, Alpha, Rapoca and KBR entered into an Assignment and Assumption Agreement pursuant to which KBR assigned all of its rights and obligations under each of the Comprehensive Agreement and the Design-Build Contract to Alpha and Rapoca, and Alpha and Rapoca assumed all of KBR’s rights and obligations under the Comprehensive Agreement and the Design-Build Contract, subject to certain obligations and conditions as set forth therein and which provided further, that all of Alpha’s and Rapoca’s obligations under the Comprehensive Agreement and the Design-Build Contract would be suspended in order to allow good faith negotiations between the Department and the Contractors for the purpose of modifying the Comprehensive Agreement and the Design-Build Contract to reflect the potential use of the value of the Contractors’ coal reserves and expertise in mining and large-scale earth moving operations to reduce estimated Project development costs;

**WHEREAS,** upon engaging in initial good faith negotiations for the purpose of modifying the Comprehensive Agreement and Design-Build Contract, the Department and the Contractors concluded that insufficient information was available to determine whether such an alternative approach to the development of the Project was feasible;

**WHEREAS,** on January 11, 2007, the Department and the Contractors entered into a First Amendment to the Assignment and Assumption Agreement (the “First Amendment to Assignment”), which provided, among other things, for the development of a limited feasibility study to determine whether the use of the Contractors’ resources would result in a cost-effective approach to the development of the Project;

**WHEREAS,** pursuant to the First Amendment to Assignment, Alpha and Rapoca each completed and submitted to the Department a limited feasibility study (individually a “Study” and together the “Studies”), which includes alternative horizontal and vertical
alignments that generally traverse coal reserve areas controlled by Alpha and Rapoca or their affiliates, estimates of the quantity of and costs to excavate earthen material along the alignments to develop a rough-grade roadbed, and conceptual plans for using a portion of the value of marketable coal reserves recovered during the development of the rough-grade roadbed (defined as the surface elevation of the rough-grade roadbed prior to the placement of subgrade material) as an offset to Project development costs;

WHEREAS, consistent with the First Amendment to Assignment, the Department and the Contractors continue to be of the opinion that the development of such alternative alignments in order to take advantage of the potential value of the Contractors’ coal reserves and expertise in recovering said reserves potentially to offset a portion of Project development costs is unique and complies with the intent of the General Assembly as expressed in §56-558(A)(1-3) of the PPTA;

WHEREAS, consistent with the First Amendment to Assignment, the Department, Alpha and Rapoca agree that the Project, as proposed in the Contractors’ Studies, must be designed, permitted, and constructed in a phased approach, and the parties currently are negotiating extensive modifications to the Comprehensive Agreement, including the Design-Build Contract and certain other project agreements assigned to and assumed by the Contractors (collectively, the “Principal Contract Documents”);

WHEREAS, on September 10, 2008, the Department and the Contractors, entered into a Second Amendment to the Assignment and Assumption Agreement (the “Second Amendment to Assignment”), which provided, among other things, for the development, at a substantial cost savings to the Department, by Alpha of a rough-grade roadbed for that portion of the Project that crossed the active mining operations of an Alpha affiliate (the “Hawks Nest Section”) because the opportunity for such cost savings were likely to expire before the Department and the Contractors were able to complete negotiation of modifications to the Principal Contract Documents;

WHEREAS, comparable opportunities to develop, at substantial cost savings to the Department, similar rough-grade roadbed on identified portions of Alpha’s alternative alignment, hereinafter referred to as the Pound Connector and Doe Branch sections of the Project are available for a limited time, and such opportunities may begin to expire before the Department and the Contractors are able to complete negotiation of modifications to the Principal Contract Documents;

WHEREAS, because of the projected substantial cost savings and the limited availability of the opportunity to develop the Pound Connector and Doe Branch sections in a manner that will enable such cost savings, the Department and Alpha wish to take advantage of such opportunity prior to the completion of negotiation of modifications to the Principal Contract Documents;
WHEREAS, before proceeding with the development of a rough-grade roadbed on the Pound Connector and Doe Branch sections of the Project (the “PC/DB Project”), certain preliminary design and preliminary engineering must be accomplished;

WHEREAS, as noted in the Contractors’ Studies, both the Pound Connector and Doe Branch sections lie within portions of the Project area to be developed by Alpha, not Rapoca;

WHEREAS, effective as of April 10, 2009, Rapoca changed its name from Pioneer Group, Inc. to Rapoca Energy Company; and

WHEREAS, on November 4, 2011, the Department and the Contractors entered into a consent and waiver agreement relating to the Project which provided, among other things, for a waiver by Rapoca of its rights to participate in negotiations between the Department and Alpha regarding the PC/DB Project, but also preserved the right of Rapoca to review this Amendment prior to its execution thereof.

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, Alpha and Rapoca agree as follows:

1. **Purpose of This Amendment.** This Amendment sets forth the agreement between the Department and Alpha for Alpha to provide to the Department the preliminary engineering and preliminary design analyses and services necessary to allow the Department to evaluate the practicability of developing two sections, the Pound Connector and Doe Branch sections, of the Project’s alternative alignment as detailed in Alpha’s Study.

2. **Description of Preliminary Engineering and Preliminary Design for Pound Connector and Doe Branch Sections.** The PC/DB Project is divided into two sections, the Pound Connector section and the Doe Branch section, and each section is further subdivided into portions of four-lane rough-grade roadbed (the “Mainline”).

   (a) **Pound Connector Section.** For the Pound Connector section, the PC/DB Project includes: (i) approximately 6.8 miles of Mainline that will be within a minimum width of 150 feet of right of way limits to accommodate the future development of a four-lane roadway which may include medians, shoulders, stormwater management facilities and highway drainage systems; (ii) necessary two-lane rough-grade roadbed connectors, which will be within a minimum width of 60 feet of right of way limits to accommodate the future development of a two-lane roadway which may include shoulders, stormwater management facilities and highway drainage systems, that will connect the Mainline to Route 23 near Alpha approximate station 105+00 near Pound, Route 83 just east of Pound near Alpha approximate station 194+00, Route 631 near Alpha approximate station 290+00, Route 624 near Alpha approximate station 435+00, and a proposed new connector to Route 83 near Alpha approximate station 470+00 at the eastern end of the Pound Connector section; and (iii) delineation of the...
Mainline, as set forth in Exhibit 1 (attached hereto and incorporated herein), which will generally run from Alpha approximate station 105+00 to Alpha approximate station 158+65 then generally from Alpha approximate station 165+06 to Alpha approximate station 470+00, for a total distance of approximately 6.8 miles.

(b) Doe Branch Section. For the Doe Branch section, the PC/DB Project includes: (i) approximately 3 miles of four-lane rough-grade roadbed, that will be within a minimum width of 150 feet of right of way limits to accommodate the future development of a four-lane roadway which may include medians, shoulders, stormwater management facilities and highway drainage systems; (ii) an additional approximately 1.9 miles of four-lane rough-grade roadbed that will be located on the Alpha affiliate’s proposed surface mine with the placement of the roadbed on the mine being dependent on permit modifications, for which Alpha shall be responsible, to add necessary acreage for road fills and changes to the mine’s proposed post mining land use for public use, that will be within a minimum width of 150 feet of right of way limits to accommodate the future development of a four-lane roadway which may include medians, shoulders, stormwater management facilities and highway drainage systems; (iii) a two-lane rough-grade roadbed connector, which will be within a minimum width of 60 feet of right of way limits to accommodate the future development of a two-lane roadway which may include shoulders, stormwater management facilities and highway drainage systems, that will connect the Mainline to Route 80 near Alpha approximate station 1539+00 at the western end of the Doe Branch section; and (iv) delineation of the Mainline, as set forth in Exhibit 1, which will generally run from Alpha approximate station 1280+00 to Alpha approximate station 1293+00, then across the affiliate’s proposed surface mine generally from Alpha approximate station 1293+00 to Alpha approximate station 1393+00, then generally from Alpha approximate station 1393+00 to Alpha approximate station 1539+00, which is the western terminus of the PC/DB Project and connect to the Project’s completed Hawks Nest Section, for a total distance, including the distance across the surface mine, of approximately 4.9 miles.

(c) Work Criteria. Alpha will perform the preliminary engineering and preliminary design analyses and services for the PC/DB Project (the “Work”) pursuant to this Amendment and in accordance with: (i) the PC/DB Project specifications, as set forth in Exhibit 2 (attached hereto and incorporated herein), and (ii) the minimum design criteria, as set forth in Exhibit 3 (attached hereto and incorporated herein).

(d) Deliverables. In performing the Work, Alpha will deliver to the Department the items specified in subsections (a), (b), (c) and (d) of each of Sections 3 and 4 of this Amendment (collectively, the “Deliverables”).

(e) Contract Price. The contract price for the Work shall be a lump sum of Three Million Eight Hundred Fifty-Five Thousand Eighty Dollars ($3,855,080) (the “Contract Price”). The Department represents and warrants to Alpha that the Contract Price has been appropriated by the Virginia General Assembly (the “General Assembly”) and allocated by the Commonwealth Transportation Board (the “CTB”) for
the Work. The Contract Price shall be allocable and payable by the Department to Alpha as follows:

(i) For the Work associated with the PC/DB Project’s Pound Connector section, the Department shall pay Alpha a lump sum of Two Million One Hundred Fifty-Eight Thousand Four Hundred Eighty Dollars ($2,158,480) (the “Pound Connector Sum”). The Department shall pay the Pound Connector Sum in accordance with the payment schedule set forth in Section 3(g) of this Amendment.

(ii) For the Work associated with the PC/DB Project’s Doe Branch section, the Department shall pay Alpha a lump sum of One Million Six Hundred Ninety-Six Thousand Six Hundred Dollars ($1,696,600) (the “Doe Branch Sum”). The Department shall pay the Doe Branch Sum in accordance with the payment schedule set forth in Section 4(g) of this Amendment.

(f) Notice to Proceed. The Department shall issue to Alpha a notice to proceed with the Work (the “NTP”) on the date on this Amendment.

3. Pound Connector Section Scope of Work, Deliverables and Payment Schedule. To accomplish the Work relating to the Pound Connector, Alpha will perform the tasks contained in the scope of work set forth in Exhibit 4 (attached hereto and incorporated herein). Alpha will use information and data arising from its performance of these tasks to develop the following Deliverables: (i) Pound Connector Preliminary Field Inspection Plans, as described in Section 3(a); (ii) Pound Connector Public Hearing Plans, as described in Section 3(b); (iii) Pound Connector Field Inspection Plans, as described in Section 3(c); and (iv) Pound Connector Preliminary Design Plans, as described in Section 3(d) (collectively, the “Pound Connector Deliverables”). Alpha will develop the Pound Connector Deliverables as set forth in Sections 3(a) through 3(d) and will provide such Deliverables to the Department pursuant to the schedule detailed in Section 3(e). Each of the Pound Connector Deliverables will be subject to the review and approval procedures set forth in Section 3(f) regarding any comments and suggestions by the Department, any adjustments and re-submissions by Alpha, and approval by the Department.

(a) Pound Connector Preliminary Field Inspection Plans. Alpha will develop Pound Connector Preliminary Field Inspection Plans (the “PCPFI Plans”), which will include major items such as the roadbed location and configuration, median widths, minimum right of way width, typical section geometrics, horizontal and vertical controls, hydrologic and environmental effects, proposed right of way limits, sight distances, and information regarding utilities. Alpha will not include in the PCPFI Plans items, or final design detail of such items, that are to be developed during the final design and engineering phase. Alpha will submit to the Department, along with the PCPFI Plans, an initial assessment of the types and quantities of materials that may require excavation in the Pound Connector section. Alpha shall participate in the value engineering study to be performed at the conclusion of the PCPFI Plans.
(b) **Pound Connector Public Hearing Plans.** Alpha will develop Pound Connector Public Hearing Plans (the “PCPH Plans”) following its receipt from the Department of any comments on and approval of the PCPFI Plans. Alpha will include in the PCPH Plans limits of disturbance, property lines, proposed right of way and easements, typical sections, property maps, plans, profiles, and cross sections. In addition, Alpha will incorporate into the PCPH Plans any agreed-upon comments and suggestions provided to Alpha by the Department during the Preliminary Field Inspection. In conjunction with its development of the PCPH Plans, Alpha will assist the Department in the preparation of other materials for the public hearing such as roll plots and exhibits, as necessary. Alpha will submit to the Department, along with the PCPH Plans, the utility report and utility map (as described in Exhibit 4) for the Pound Connector section along with an interim assessment of the types and quantities of materials that may require excavation in the Pound Connector section.

(c) **Pound Connector Field Inspection Plans.** Alpha will develop Pound Connector Field Inspection Plans (the “PCFI Plans”) after the public hearing process, and Alpha will incorporate into the PCFI Plans any agreed-upon comments and suggestions provided to Alpha by the Department following the public hearing. In addition, Alpha will incorporate into the PCFI Plans the detailed roadway and hydraulic designs so as to assist in field inspections regarding the roadbed and utilities. Alpha will develop the PCFI Plans in two phases and will submit separately to the Department the PCFI Plans for each of the two phases. The first phase, PCFI Plans Phase 1, will begin at Alpha approximate station 165+06 and extend to Alpha approximate station 470+00. The second phase, PCFI Plans Phase 2, will begin at Alpha approximate station 105+00 and extend to Alpha approximate station 158+65. Alpha will submit to the Department, along with the PCFI Plans Phase 1, the preliminary investigation of impacts to jurisdictional waters report (as described in Exhibit 4) and the general geotechnical investigation plan (as described in Exhibit 4) for the Pound Connector section.

(d) **Pound Connector Preliminary Design Plans.** Alpha will develop Pound Connector Preliminary Design Plans (the “PCPD Plans”) following its receipt from the Department of any comments on and approval of the PCFI Plans (Phases 1 and 2). Alpha will incorporate into the PCPD Plans any agreed-upon comments and suggestions provided to Alpha by the Department regarding the PCFI Plans or arising from the field inspections. Alpha will develop the PCPD Plans in two phases and will submit separately to the Department the PCPD Plans for each of the two phases. For the first phase, PCPD Plans Phase 1, and the second phase, PCPD Plans Phase 2, Alpha will include geographical delineations that correspond to PCFI Plans Phase 1 and PCFI Plans Phase 2. Alpha will submit to the Department, along with the PCPD Plans Phase 1, information relevant to compliance with the Clean Water Act and other environmental statutes in a permit application format (as described in Exhibit 4). Alpha will submit to the Department, along with the PCPD Plans Phase 2, an enhanced assessment, subject to change at final design, of the types and quantities of materials that may require excavation in the Pound Connector section.
(e) **Pound Connector Deliverables Schedule.** Alpha will commence the Work necessary to develop the Pound Connector Deliverables upon its receipt from the Department of the NTP. The Department and Alpha may agree to modify the schedule, if necessary or convenient, for the purpose of accelerating design efforts. Alpha will submit the Pound Connector Deliverables to the Department in accordance with the following schedule:

(i) PCPFI Plans will be submitted no later than March 5, 2012.

(ii) PCPH Plans will be submitted no later July 9, 2012.

(iii) PCFI Plans Phase 1 will be submitted no later than December 5, 2012.

(iv) PCPD Plans Phase 1 will be submitted no later than February 7, 2013.

(v) PCFI Plans Phase 2 will be submitted no later than April 4, 2013.

(vi) PCPD Plans Phase 2 will be submitted no later than June 7, 2013.

(f) **Review and Approval of Pound Connector Deliverables.** Upon its receipt from Alpha of a Pound Connector Deliverable, the Department will review such Deliverable and provide to Alpha either written comments and suggestions thereon or its approval thereof. The Department will perform these tasks promptly and will complete them no later than twenty-one (21) days after its receipt of such Deliverable. If the Department provides Alpha with comments and suggestions, Alpha will have ten (10) days to make appropriate adjustments and re-submit the revised Deliverable to the Department. Within ten (10) days of receipt by the Department of the revised Deliverable, the parties will work together in addressing and resolving any inconsistencies, to be followed by the Department’s written approval of the Deliverable within such ten (10) day period. If, with respect to a Deliverable, the Department either (i) fails to provide to Alpha either written comments and suggestions thereon or its approval thereof within twenty-one (21) days of its initial receipt of such Deliverable or (ii) fails to provide to Alpha its approval of the revised Deliverable within ten (10) days of its receipt thereof despite Alpha’s exercise of good faith to work together with the Department to address and resolve any inconsistencies during such ten (10) day period, then such Deliverable or such revised Deliverable, as applicable, will be deemed approved by the Department.

(g) **Pound Connector Payment Schedule.** Payment of the Pound Connector Sum to Alpha by the Department shall accrue and be allocable upon the Department’s issuance of the NTP or approval of individual Deliverables, along with the Department’s receipt from Alpha of corresponding pay applications, as follows:
(i) No later than thirty (30) days after the Department’s issuance of the NTP and its receipt from Alpha of a pay application, the Department shall pay to Alpha $215,848, which is ten percent (10%) of the Pound Connector Sum.

(ii) No later than thirty (30) days after the Department’s approval of the PCPFI Plans and its receipt from Alpha of a pay application, the Department shall pay Alpha $431,696, which is twenty percent (20%) of the Pound Connector Sum.

(iii) No later than thirty (30) days after the Department’s approval of the PCPH Plans and its receipt from Alpha of a pay application, the Department shall pay Alpha $539,620, which is twenty-five percent (25%) of the Pound Connector Sum.

(iv) No later than thirty (30) days after the Department’s approval of the PCFI Plans Phase 1 and its receipt from Alpha of a pay application, the Department shall pay Alpha $625,959, which is twenty-nine percent (29%) of the Pound Connector Sum.

(v) No later than thirty (30) days after the Department’s approval of the PCPD Plans Phase 1 and its receipt from Alpha of a pay application, the Department shall pay Alpha $194,263, which is nine percent (9%) of the Pound Connector Sum.

(vi) No later than thirty (30) days after the Department’s approval of the PCFI Plans Phase 2 and its receipt from Alpha of a pay application, the Department shall pay Alpha $107,924, which is five percent (5%) of the Pound Connector Sum.

(vii) No later than thirty (30) days after the Department’s approval of the PCPD Plans Phase 2 and its receipt from Alpha of a pay application, the Department shall pay Alpha $43,170, which is two percent (2%) of the Pound Connector Sum.

However, if the Department, acting in good faith and prior to the approval of a certain Deliverable, notifies Alpha that it is invoking the dispute resolution provisions of Section 13 with respect to the adequacy of such Deliverable, then the Department will make payment to Alpha for such Deliverable in accordance with the terms of Section 13(b).

4. **Doe Branch Section Scope of Work, Deliverables and Payment Schedule.** To accomplish the Work relating to the Doe Branch section, Alpha will perform the tasks contained in the scope of work set forth in Exhibit 4. Alpha will use information and data arising from its performance of these tasks to develop the following Deliverables: (i) Doe Branch Preliminary Field Inspection Plans, as described in Section
(a) Doe Branch Preliminary Field Inspection Plans. Alpha will develop Doe Branch Preliminary Field Inspection Plans ("DBPFI Plans"), which will include major items such as the roadbed location and configuration, median widths, minimum right of way width, typical section geometrics, horizontal and vertical controls, hydrologic and environmental effects, proposed right of way limits, sight distances, and information regarding utilities. Alpha will not include in the DBPFI Plans items, or final design detail of such items, that are to be developed during the final design and engineering phase. Alpha will submit to the Department, along with the DBPFI Plans, an initial assessment of the types and quantities of materials that may require excavation in the Doe Branch section. Alpha shall participate in the value engineering study to be performed at the conclusion of the DBPFI Plans.

(b) Doe Branch Public Hearing Plans. Alpha will develop Doe Branch Public Hearing Plans ("DBPH Plans") following its receipt from the Department of any comments on and approval of the DBPFI Plans. Alpha will include in the DBPH Plans limits of disturbance, property lines, proposed right of way and easements, typical sections, property maps, plans, profiles, and cross sections. In addition, Alpha will incorporate into the DBPH Plans any agreed-upon comments and suggestions provided to Alpha by the Department during the Preliminary Field Inspection. In conjunction with its development of the DBPH Plans, Alpha will assist the Department in the preparation of other materials for the public hearing such as roll plots and exhibits, as necessary. Alpha will submit to the Department, along with the DBPH Plans, the utility report and utility map (as described in Exhibit 4) for the Doe Branch section along with an interim assessment of the types and quantities of materials that may require excavation in the Doe Branch section.

(c) Doe Branch Field Inspection Plans. Alpha will develop Doe Branch Field Inspection Plans (the "DBFI Plans") after the public hearing process, and Alpha will incorporate into the DBFI Plans any agreed-upon comments and suggestions provided to Alpha by the Department following the public hearing. In addition, Alpha will incorporate into the DBFI Plans the detailed roadway and hydraulic designs so as to assist in field inspections regarding the roadbed and utilities. Alpha will develop the DBFI Plans in two phases and will submit separately to the Department the DBFI Plans for each of the two phases. The first phase, DBFI Plans Phase 1, will begin at Alpha approximate station 1280+00 and extend to Alpha approximate station 1293+00, then from Alpha approximate station 1393+00 and extend to Alpha approximate station
1539+00. The second phase, DBFI Plans Phase 2, will begin at Alpha approximate station 1293+00 and extend to Alpha approximate station 1393+00. Alpha will submit to the Department, along with the DBFI Plans Phase 1, the preliminary investigation of impacts to jurisdictional waters report (as described in Exhibit 4) and the general geotechnical investigation plan (as described in Exhibit 4) for the Doe Branch section.

(d) Doe Branch Preliminary Design Plans. Alpha will develop Doe Branch Preliminary Design Plans (the “DBPD Plans”) following its receipt from the Department of any comments on and approval of the DBFI Plans (Phases 1 and 2). Alpha will incorporate into the DBPD Plans any agreed-upon comments and suggestions provided to Alpha by the Department regarding the DBFI Plans or arising from the field inspections. Alpha will develop the DBPD Plans in two phases and will submit separately to the Department the DBPD Plans for each of the two phases. For the first phase, DBPD Plans Phase 1, and the second phase, DBPD Plans Phase 2, Alpha will include geographical delineations that correspond to DBFI Plans Phase 1 and DBFI Plans Phase 2. Alpha will submit to the Department, along with the DBPD Plans Phase 1, information relevant to compliance with the Clean Water Act and other environmental statutes in a permit application format (as described in Exhibit 4). Alpha will submit to the Department, along with the DBPD Plans Phase 2, an enhanced assessment, subject to change at final design, of the types and quantities of materials that may require excavation in the Doe Branch section.

(e) Doe Branch Section Deliverables Schedule. Alpha will commence the Work necessary to develop the Doe Branch Deliverables upon its receipt from the Department of the NTP. The Department and Alpha may agree to modify the schedule, if necessary or convenient, for the purpose of accelerating design efforts. Alpha will submit the Doe Branch Deliverables to the Department in accordance with the following schedule:

(i) DBPFI Plans will be submitted no later than February 3, 2012.

(ii) DBPH Plans will be submitted no later than May 4, 2012.

(iii) DBFI Plans Phase 1 will be submitted no later than August 6, 2012.

(iv) DBPD Plans Phase 1 will be submitted no later than October 1, 2012.

(v) DBFI Plans Phase 2 will be submitted no later than June 7, 2013.

(vi) DBPD Plans Phase 2 will be submitted no later than July 29, 2013.
(f) **Review and Approval of Doe Branch Deliverables.** Upon its receipt from Alpha of a Doe Branch Deliverable, the Department will review such Deliverable and provide to Alpha either written comments and suggestions thereon or its approval thereof. The Department will perform these tasks promptly and will complete them no later than twenty-one (21) days after its receipt of such Deliverable. If the Department provides Alpha with comments and suggestions, Alpha will have ten (10) days to make appropriate adjustments and re-submit the revised Deliverable to the Department. Within ten (10) days of receipt by the Department of the revised Deliverable, the parties will work together in addressing and resolving any inconsistencies, to be followed by the Department’s written approval of the Deliverable within such ten (10) day period. If, with respect to a Deliverable, the Department either (i) fails to provide to Alpha either written comments and suggestions thereon or its approval thereof within twenty-one (21) days of its initial receipt of such Deliverable or (ii) fails to provide to Alpha its approval of the revised Deliverable within ten (10) days of its receipt thereof despite Alpha’s exercise of good faith to work together with the Department to address and resolve any inconsistencies during such ten (10) day period, then such Deliverable or such revised Deliverable, as applicable, will be deemed approved by the Department.

(g) **Doe Branch Payment Schedule.** Payment of the Doe Branch Sum to Alpha by the Department shall accrue and be allocable upon the Department’s issuance of the NTP or approval of individual Deliverables, along with the Department’s receipt from Alpha of corresponding pay applications, as follows:

(i) No later than thirty (30) days after the Department’s issuance of the NTP and its receipt from Alpha of a pay application, the Department shall pay to Alpha $169,660, which is ten percent (10%) of the Doe Branch Sum.

(ii) No later than thirty (30) days after the Department’s approval of the DBPFI Plans and its receipt from Alpha of a pay application, the Department shall pay Alpha $339,320, which is twenty percent (20%) of the Doe Branch Sum.

(iii) No later than thirty (30) days after the Department’s approval of the DBPH Plans and its receipt from Alpha of a pay application, the Department shall pay Alpha $424,150, which is twenty-five percent (25%) of the Doe Branch Sum.

(iv) No later than thirty (30) days after the Department’s approval of the DBFI Plans Phase 1 and its receipt from Alpha of a pay application, the Department shall pay Alpha $458,082, which is twenty-seven percent (27%) of the Doe Branch Sum.

(v) No later than thirty (30) days after the Department’s approval of the DBPD Plans Phase 1 and its receipt from Alpha of a pay application, the
Department shall pay Alpha $152,694, which is nine percent (9%) of the Doe Branch Sum.

(vi) No later than thirty (30) days after the Department’s approval of the DBFI Plans Phase 2 and its receipt from Alpha of a pay application, the Department shall pay Alpha $118,762, which is seven percent (7%) of the Doe Branch Sum.

(vii) No later than thirty (30) days after the Department’s approval of the DBPD Plans Phase 2 and its receipt from Alpha of a pay application, the Department shall pay Alpha $33,932, which is two percent (2%) of the Doe Branch Sum.

However, if the Department, acting in good faith and prior to the approval of a certain Deliverable, notifies Alpha that it is invoking the dispute resolution provisions of Section 13 with respect to the adequacy of such Deliverable, then the Department will make payment to Alpha for such Deliverable in accordance with the terms of Section 13(b).

5. **Property Right of Entry.** Alpha will coordinate with the Department in obtaining the right to enter upon property relevant to the Work, subject to its compliance with (i) Section 33.1-94 of the Code and (ii) Department policies regarding rights of entry. The Department has provided to Alpha the aforementioned policies, and it will provide to Alpha any and all updates to such policies throughout the term of Alpha’s performance pursuant to this Amendment. As part of its coordination with Alpha in communicating with affected property owners of land neither owned by the Commonwealth nor owned or controlled by Alpha, the Department authorizes Alpha and its agents to communicate with such property owners by sending letters as required by law on Department letterhead, provided that (i) the parties coordinate the content of such letters and (ii) any letters on Department letterhead are signed by the Department’s Project Manager or his designee.

6. **Resources Commitment.** Alpha, at its own cost and expense, shall furnish to the Department all necessary resources and related services to develop and complete the Work in accordance with this Amendment. Alpha reserves the right to subcontract the Work consistent with any applicable Commonwealth or Federal regulatory requirements, but shall remain directly responsible for the performance of all Work.

7. **Design Professional Services.** Alpha shall provide through qualified, licensed design professionals employed by Alpha, or procured from qualified, independent licensed design consultants, the necessary design services, including engineering, surveying and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Alpha to complete the Work consistent with this Amendment. All design professional services related to the Work shall be supervised by professionals properly licensed in the Commonwealth. The standard of care for all design professional services performed in execution of the Work
shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Work.

8. **Monitoring.** The Department’s Oversight Plan is detailed in Exhibit 5 (attached hereto and incorporated herein). Alpha shall provide the Department with such reasonable access, information and assistance as the Department requires for oversight, observation, inspection and monitoring of the Work. However, the Department shall not allow such monitoring to interfere with Alpha’s performance of the Work except as may be necessary and reasonable. If additional information is necessary, Alpha will provide the Department’s Project Manager with such information as is reasonably necessary to develop reports required of the Department’s Project Manager by the Department. If the Department believes that the Work is not in conformance with this Amendment, the Department’s Project Manager shall immediately notify Alpha’s Project Manager and they shall then confer regarding the nonconformity in question as soon as practical. If the parties agree that the nonconformity exists and warrants correction, then Alpha shall take meaningful steps to commence correction of such nonconforming Work at Alpha’s sole cost and expense. Alpha’s Project Manager and, if requested by the Department, Alpha’s design and/or geotechnical consultants, shall meet with the Department’s Project Manager, on a monthly basis, unless otherwise coordinated by each party. During these meetings, Alpha’s Project Manager shall present information relevant to the Work during the previous month and any pertinent information on Work planned for the upcoming month. The purpose of the meetings will be to identify progress being made on the Work and to allow the Department to comment and make suggestions regarding the status of the Work. Such meetings will be held at an agreed-upon location and at a time designated by the Department and reasonably acceptable to Alpha’s Project Manager. The Department shall provide minutes of the meetings, if required, within five (5) business days after the monthly meeting.

9. **Work Product.** “Work Product” means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of Alpha and in any way related to the Work.

(a) Alpha shall retain ownership of all Work Product it produces 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 an approval to Alpha that a Deliverable under this Amendment is consistent with the scope and requirements of this Amendment and all outstanding issues and deficiencies in such Deliverable on the part of Alpha have been resolved; or

(ii) The date on which this Amendment is terminated, for any reason.
At such date, Alpha 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.

(b) Certain of Alpha’s Work Product and certain other records of
which the Department may obtain a copy under this Amendment may constitute
information and materials exempt from disclosure under provisions of the Virginia
Freedom of Information Act; namely, subdivision 11 of Section 2.2-3705.6 of the Code.
Should any records become the subject of a request for public disclosure, the
Department shall comply with applicable law.

(c) The Department’s use of the Work Product, without Alpha’s
participation on the Project or any subsequent procurement by the Department on
another project shall be at the Department’s sole risk. By this Amendment, Alpha
neither warrants nor represents that the Work Product is suitable for use in the
development of the PC/DB Project, or another project, without Alpha’s participation or
modification. The Department waives any rights to seek recovery from Alpha 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 Project or another
project without Alpha’s participation.

10. **Record Maintenance and Retention of Records.** Alpha 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. During the performance of the Work and for a period of
three (3) years after final payment hereunder, Department and Department’s accountants
shall be afforded access from time-to-time, upon reasonable notice only, to review
records that relate to Alpha’s applications for payment for the Work pursuant to Sections
3(g) and 4 (g) above.

11. **Changes in Described Roles and Responsibilities.** This Amendment is
limited to the roles and responsibilities as described in this Amendment. Any expansion
or changes to such roles or any other amendments or modifications of this Amendment, if
agreed upon by the parties, will be agreed to, in writing, in a negotiated supplement to
this Amendment executed by the affected parties. By way of example, a modification of
the provisions related to the Work shall be effected by a written instrument executed by
Alpha and the Department, without the necessity of Rapoca’s signature or approval.

12. **Default.**

(a) The term, for purposes of this Amendment, “Event of Default”
shall mean the failure of the Department or Alpha to materially fulfill its respective
individual obligations described in this Amendment.

(b) In the case of an Event of Default by a party to this Amendment,
the defaulting party, upon receipt of written notification from the non-defaulting party,
will have ten (10) days to cure any breach resulting in such Event of Default. If breach cannot be cured in ten (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 as may be agreed by the parties.

(c) If the party receiving notice of an Event of Default disagrees that a default has occurred, the party claiming default shall be allowed to submit the matter for dispute resolution pursuant to Section 13.

(d) If an Event of Default is unsecured or unresolved, either party shall be allowed to submit the matter for dispute resolution pursuant to Section 13.

(e) The Department and the Contractors mutually waive and release any and all rights 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 Amendment, exceed the Contract Price.

13. **Dispute Resolution.**

(a) The parties shall attempt to resolve any dispute that may arise between or among the Department and Alpha under this Amendment through best efforts and good faith negotiations between authorized representatives of the Department and authorized representatives of Alpha, in accordance with this Section. In conducting such negotiations, the Department and Alpha recognize that in drafting this Amendment 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 this Amendment provides no clear guidance, the Department and Alpha concur in the principle that this Amendment is intended to operate between them in fairness.

(i) With respect to matters pertaining to the Work, the Department’s Project Manager and Alpha’s Project Manager will meet to review and resolve contract disputes. In the event of failure to resolve a dispute at this level within fifteen (15) days, then either party may request that the dispute be elevated to the Department’s Bristol District Construction Engineer and Alpha’s designated Project Officer.

(ii) In the event of failure to resolve a dispute at this level within thirty (30) days after such request is made, either party may request, which request shall include all pertinent correspondence and information, that the dispute be elevated to the Department’s Chief Engineer and Alpha’s designated Senior Project Officer.

(iii) In the event of failure to resolve a dispute at this level within forty-five (45) days after such request is made, either party may request that the dispute be elevated to the Department’s Commissioner and Alpha’s Executive Vice President.
(iv) If a dispute remains unresolved after the parties participate in the process set forth in this Section 13 for more than sixty (60) days following referral to the Commissioner and Alpha’s Executive Vice President, either party shall be entitled to bring a civil action, which shall be filed, heard and decided in the Circuit Court of the City of Richmond and shall be the exclusive jurisdiction and venue for any such civil actions brought by any party against any other party; provided, however, that the foregoing does not affect any claims or matters which are governed by a different dispute resolution procedure set forth in any other agreement between the parties.

(b) In the event the Department, acting in good faith and prior to the approval of a certain Deliverable pursuant to Section 3(f) or Section 4(f), notifies Alpha that it is invoking the dispute resolution provisions of this Section 13 with respect to the adequacy of such Deliverable, then the Department will pay to Alpha, in relation to such Deliverable, sixty-seven percent (67%) of the applicable amount that would otherwise be payable pursuant to the terms of either Section 3(g) or Section 4(g). The remaining thirty-three (33%) of any such payment shall be paid upon the sooner of the Department’s issuance of written approval of such Deliverable or resolution of the matter through the dispute resolution procedures of this Section 13.

(c) Each party shall bear its own attorney’s fees and costs in any dispute or litigation arising out of or pertaining to this Amendment, and no party shall seek or accept an award of attorney’s fees or costs.

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 this Amendment at any time by giving written notice of the termination to Alpha. If the Department intends to take such action, it shall deliver to Alpha a notice (a “Notice of Termination for Public Convenience”).

(b) After receipt of a Notice of Termination for Public Convenience, and except as directed by the Department, Alpha shall immediately proceed as follows, regardless of any delay in payment of any amounts due under this Section 14, with respect to the terminated Work: (i) transfer and deliver to the Department or its designee, as directed by the Department: (1) the Work for which the Department has paid Alpha pursuant to Section 2(e); and (2) copies of, and all rights, title and interest of Alpha in and to: (a) all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples, surveys, information and other Work Product that would have been required to be furnished to the Department if the Work had been completed; and (b) all intellectual property developed specifically for the Department under this Amendment; and (ii) complete performance of all Work not terminated.
(c) In the event Alpha receives a Notice of Termination for Public Convenience, Alpha shall be paid by the Department amounts due for Work performed prior to the date of the termination under the terms of this Amendment including its reasonable costs incurred on any 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.

(d) Upon receiving Notice of Termination for Convenience, neither the Department nor Alpha shall have any continuing duty to the other under this Amendment with respect to the Work terminated, except as expressly provided by this Section 14 or those provisions of this Amendment that are intended to survive termination of this Amendment (such as Section 15(b)).

(e) The amount otherwise due Alpha under this Section 14 shall be reduced by the amount of any valid claim which Department may have against Alpha in connection with this Amendment.

15. **Compliance and Indemnity.**

(a) Alpha shall: (i) comply with the laws of the Commonwealth, and to all other applicable laws whether or not mentioned or specified herein, during its performance of the Work; and (ii) maintain (or cause to be maintained) insurance coverage as described by Exhibit 6 (attached hereto and incorporated herein).

(b) Alpha shall, subject to conditions contained in Section 9(c) of this Amendment, indemnify, protect, defend, hold harmless and release the Commonwealth, the Department, the Commonwealth Commissioner of Highways, the CTB, and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them (each a “Commonwealth Indemnitee”) from and against: (a) all third party claims arising from the unlawful acts, omissions, negligence or willful misconduct of Alpha, its affiliates, employees, subcontractors or their employees as a result of, or in connection with, performance of the Work, excluding the portion of liability that is attributable to the unlawful acts or omissions, negligence or willful misconduct of a Commonwealth Indemnitee; (b) any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued, excluding any suit, claim or proceeding based on infringement or violation of a patent or copyright, relating solely to a particular process or product of a particular manufacturer specified by Department and not offered or recommended by Alpha to Department; and (c) provided that the Department is not in breach of its contractual obligation to make payments to Alpha for the Work, all claims brought against any Commonwealth Indemnitee as a result of the failure of Alpha, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. The provisions of this Section 15(b) shall survive the expiration or termination of this Amendment for any reason.
(c) Alpha shall adhere to Federal regulations as required by United States Code Title 23 eligible projects to the extent applicable to the scope of work as described in Exhibit 4.


All notifications, requests, approvals, consents, and determinations referenced in this Amendment shall be in writing, shall be sent to the individuals designated pursuant to this Section 16, by personal delivery, first class U.S. mail (postage prepaid), nationally recognized overnight courier service, facsimile transmission to such individual (with confirmation of delivery), or email, at the street address, facsimile number, or email address provided for that individual below, and shall be deemed given or delivered when received by the recipient.

Alpha:

Vaughn R. Groves, Esq.
Alpha Natural Resources, LLC
One Alpha Place
P.O. Box 16429
Bristol, VA 24202
Facsimile: (276) 623-4321
Email: vgroves@alphanr.com

With copies to:

Roman C. Lawson, P.E.
Paramont Coal Company Virginia, LLC
5703 Crutchfield Drive
Norton, VA 24273
Facsimile: (276) 859-2463
Email: rlawson@alphanr.com

Michael Castle, Esq.
131 Summit Ridge Road
Hurricane, WV 25526
Facsimile: (304) 757-2956
Email: mcastle@alphanr.com
Charles E. Wall, Esq.
Williams Mullen
200 South 10th Street
Richmond, VA 23219
Facsimile: (804) 420-6507
Email: cwall@williamsmullen.com

Rapoca:

Clyde Stacy
55 Terrace Drive
Bristol, VA 24202
Facsimile: (276) 669-2671
Email: rapocal@aol.com

With copy to:

John G. Milliken, Esq
Venable LLP
8010 Towers Crescent Drive
Suite 300
Vienna, VA 22181
Facsimile: (703) 821-8949
Email: jgmilliken@venable.com

The Department:

Chief Engineer
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23218
Facsimile: (804) 786-9136
Email: mal.kerley@vdot.virginia.gov

With copies to:

Bristol District Administrator
Virginia Department of Transportation
870 Bonham Road
Bristol, VA 24203
Facsimile: (276) 645-1682
Email: michael.russell@vdot.virginia.gov
17. **Designation of Representatives.**

(a) Each of the parties to this Amendment designate 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 Amendment, including the amendment, waiver or modification of any of the terms of this Amendment. A party may designate additional or alternative representatives and/or notice recipients, by delivery of prior notice to the other parties.

**Alpha:**

Vaughn R. Groves, Esq.
Alpha Natural Resources, LLC
One Alpha Place
P.O. Box 16429
Bristol, VA 24202
Facsimile: (276) 623-4321
Email: vgroves@alphanr.com

**Rapoca:**

Clyde Stacy
55 Terrace Drive
Bristol, VA 24202
Facsimile: (276) 669-2671
Email: rapoca1@aol.com
The Department:

Chief Engineer
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23218
Facsimile: (804) 786-9136
Email: mal.kerley@vdot.virginia.gov

(b) A party may also designate technical representatives who shall be authorized to investigate, negotiate, and report on behalf 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, and shall of the authority established by this Amendment or by subsequent notice to the other parties.

Department Project Manager:

CFX Project Manager
Virginia Department of Transportation
870 Bonham Road
Bristol, VA 24203
Facsimile: (276) 645-4874
Email: rob.griffith@vdot.virginia.gov

Alpha Project Manager:

Roman C. Lawson, P.E.
Paramount Coal Company Virginia, LLC
5703 Crutchfield Drive
Norton, VA 24273
Facsimile: (276) 859-2463
Email: rlawson@alphanr.com

18. 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 Amendment.

19. Public 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 are not limited to, a press release, an opinion document, or other similar instrument.
20. **Assignment.**

(a) The Department may transfer and assign its interests in this Amendment and any other Project agreements to any other public agency or public entity as permitted by law, provided, however, that the successor or assignee has assumed all of the Department’s obligations, duties and liabilities under this Amendment and the Project agreements then in effect and provided the Contractors with reasonable assurances of legal and financial authority to honor and perform same.

(b) Neither Contractor shall assign its rights or obligations under this Agreement, without the prior written consent of the Department, which consent shall not be unreasonably withheld. In exercising its right to consent or to withhold its consent to an assignment, the Department may consider, among other things, (i) the absence of reasonable assurances of the legal authority of the assignor or proposed assignee to effect such assignment or the legal authority and/or financial capacity of the proposed assignee to perform the assignor's obligations; and (ii) the availability of guaranties and other security offered by the proposed assignor to ensure performance of the proposed assignee.

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

(d) Subject to this Section, this Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.

21. **Days.** For purposes of this Amendment, the term “days” shall refer to calendar days.

22. **Governing Law and Venue.** This Amendment shall be governed by and construed in accordance with the laws of the Commonwealth. Venue for any legal action arising out of or relating to this Amendment shall lie in the Circuit Court of the City of Richmond, Virginia.

23. **No Third Party Beneficiaries.** Nothing contained in this Amendment 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 Amendment.

24. **Counterparts.** This Amendment 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.

25. **Entire Agreement.** THIS 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
26. **Appropriation and Allocation.** The Department’s payment of any damages or any other amounts due and owing by the Department to a Contractor under this Amendment shall be subject to appropriation by the General Assembly and allocation by the CTB therefor; provided that, upon determination of such damages or such other amounts not already appropriated and allocated, the Department shall with all practical dispatch consistent in all respects with applicable law and its obligations under this Amendment (i) deliver to the Governor and the Director of the Department of Planning and Budget of the Commonwealth, before December 1 with respect to any such payment requested to be appropriated by the next regular session of the General Assembly, a statement of the amount of any such payment due or expected to be due and a request that the Governor include in his budget to be delivered to the next session of the General Assembly a provision that there be appropriated such amounts for such purpose to the extent required, from any legally available funds, (ii) use its diligent efforts to have (A) the Governor include, in each biennial or any supplemental budget the Governor presents to the General Assembly, the amounts set forth in any statement delivered pursuant to (i) above, (B) the General Assembly appropriate and reappropriate, as applicable, such amounts to or on behalf of the Department for the purpose of paying to a Contractor any damages or other amounts due and owing by the Department to such Contractor under this Amendment, and (C) the CTB allocate such appropriated amounts as applicable for payment to such Contractor, and (iii) notify such Contractor promptly upon becoming aware of any failure by (A) the Governor to include such amounts in his budget delivered to the next session of the General Assembly, (B) the General Assembly to appropriate such amounts during such next session of the General Assembly or (C) the CTB to so allocate such amounts for payment to such Contractor.

[Signatures appear on next page]
IN WITNESS WHEREOF, the parties, intending to be legally bound, have
executed this Amendment on the date first written above.

"Department"

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

By: [Signature]
Gregory A. Whitley, Sr.
Commonwealth Commissioner of Highways

"Contractors"

ALPHA NATURAL RESOURCES, LLC,
a Delaware limited liability company

By:

Its:

RAPOCA ENERGY COMPANY,
formerly known as Pioneer Group Inc.,
a Virginia corporation

By:

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

"Department"

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

By:__________________________________________

Gregory A. Whirley, Sr.
Commonwealth Commissioner of Highways

"Contractors"

ALPHA NATURAL RESOURCES, LLC,
a Delaware limited liability company

By:__________________________________________

Its: Executive Vice President & General Counsel

RAPOCA ENERGY COMPANY,
formerly known as Pioneer Group Inc.,
a Virginia corporation

By:__________________________________________

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

"Department"  
VIRGINIA DEPARTMENT OF TRANSPORTATION,  
an agency of the Commonwealth of Virginia  

By: ________________________________________

Gregory A. Whirley, Sr.  
Commonwealth Commissioner of Highways

"Contractors"  
ALPHA NATURAL RESOURCES, LLC,  
a Delaware limited liability company  

By: ________________________________________

Its: _______________________________________

RAPOCA ENERGY COMPANY,  
formerly known as Pioneer Group Inc.,  
a Virginia corporation  

By: Clyde Stacy  

Its: President
EXHIBIT 2
SPECIFICATIONS GUIDELINES
FOR
PRELIMINARY ENGINEERING AND DESIGN FOR PC/DB PROJECT

1.0 VDOT MINIMUM GEOTECHNICAL REQUIREMENTS FOR CUT/FILL SLOPES

1.1 Soil Cuts

Cuts in soil and fills with constructed with overburden material (“Soil Cut slopes/Fill Slopes”) are likely to be encountered in the PC/DB Project Area. Preliminary design considerations, where soil sections are expected, will include identifying the general location, if practical, from geologic information available, of such soil areas along the alignment and applying the following cut/fill slope design requirements:

- Preliminary design for all Soil Cut/Fill Slopes will be no steeper than 2H:1V unless a steeper slope is approved by the Department.

1.2 Rock Cuts

The preliminary design objectives for rock cuts in the PC/DB Project area include: (i) designing for long term stability of the cut, (ii) reducing the Department’s long term maintenance costs, and (iii) considering the risk to the traveling public by preliminary designing cuts to reduce the chances of the material reaching the roadway.

To meet these objectives, preliminary design considerations for the PC/DB Project should include an (i) understanding, using the findings found in the “general geotechnical investigation plan” developed for the PC/DB Project, of the geologic structure, stratigraphy and lithology of rock units in the area of the cuts, (ii) evaluation of the characteristics of the rock mass with respect to expected quality (i.e., assumed strength and frequency, orientation and condition of discontinuities) and durability, and (iv) incorporation of local experience with rock cuts in the area during the design phase.

Given these objectives and considerations, Alpha’s design geotechnical engineer should develop preliminary designs for rock cut slopes based on the procedures and minimum requirements provided herein, which includes: (i) making assumptions of the weathering characteristics for rock units in the PC/DB Project area, and (ii) preliminary designs of cut slope ratios based on the information found in the general geotechnical investigation plan.

The following are minimum design requirements for bedrock cut slopes in the Project area.

1.2.1 Review Existing Geologic Information

Alpha, in the development of its general geotechnical investigation plan, shall review available geologic information relating to the bedrock in the Project area including published and
unpublished geologic information, previously prepared geotechnical reports, existing borings, and observations of sloping techniques used for other road-cuts in the vicinity.

1.2.2 Perform a Field Reconnaissance

Alpha shall perform a site reconnaissance that includes but is not limited to: (i) observations of rock exposures in and around the project area to include logging of the orientation and condition of joints and other discontinuities in the rock exposures and observation of the performance of existing cut slopes in the same rock units, (ii) a review of available core-hole loggings, if any, for information on the strata expected to be encountered, (iii) and the use of the core-hole boring information and visual observations to measure or predict the orientation and likely condition of joints and other discontinuities along with the information obtained from logging of rock exposures that may be encountered in the area of the proposed rock cut slopes project stratigraphy.

1.2.3 Additional Protection of Traveling Motorists from Potential Rock-falls

As additional protection of traveling motorists from potential rock-falls, Alpha will incorporate the following approved practice used in its King Coal Highway (“KCH”) project in West Virginia: (i) beginning at the edge of the travel lane adjacent to a rock cut that will remain exposed and traversing toward the exposed rock cut, a shoulder, extending for a distance of ten feet and sloping downward at 5% will be established; (ii) a slope, starting at the rock cut edge of the established shoulder, extending for ten (10) feet and sloping downward at 25% will be established; (iii) a flat ditch, starting at the rock cut edge of the 25% slope, extending for four (4) feet will be established; (iv) a 2H:1V slope, starting at the rock cut edge of the flat ditch, will extend upward vertically for approximately five (5) feet or ten (10) feet horizontally from the edge of the flat ditch; (v) a site-bench, starting at the rock cut edge of the 2H:1V slope (approximately five (5) feet higher than the flat ditch), extending for approximately ten (10) feet and until it intersects with the rock cut, will be established; and (vi) from the site bench’s interface with the rock cut and continuing vertically, additional benches will be constructed in accordance with the requirements for benches in cut-slopes as outlined above.
EXHIBIT 3

MINIMUM DESIGN CRITERIA

Mainline: Four-Lane Rough-Grade Roadbed
(GS-1 – Rural Principal Arterial, Other Principal Arterials, Rolling)

Design Speed: 60 mph
Min. Radius: 1204 feet
Max. Grade: 6.0%
Min. Stopping Sight Distance: 570 feet; for grades ≥ 3%, see Exhibit 3-2 of the 2004 AASHTO Green Book
Max. c: 8%

Cut Slope:
  Soil Cut: In accordance with Exhibit 2 Project Specifications
  Rock Cut: In accordance with Exhibit 2 Project Specifications

Fill Slopes: Approximate 2:3H:1V
  For Preliminary Design (allows for benches)

Min. Width of Right of Way Limits: 150 feet
<table>
<thead>
<tr>
<th>Connector Roads: Two-Lane Rough-Grade Roadbed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(GS-3 - Mountainous with Average Daily Traffic 400-1500; Used for Route 83 Connectors)</td>
</tr>
<tr>
<td>(GS-4 - Mountainous with Average Daily Traffic 400-1500; Used for Route 631, Route 624, &amp; Route 80 Intersections)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GS-3</th>
<th>GS-4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Speed: 30 mph</td>
<td>Design Speed: 30 mph</td>
</tr>
<tr>
<td>Min. Radius: 251 feet</td>
<td>Min. Radius: 251 feet</td>
</tr>
<tr>
<td>Max. Grade: 10.0%</td>
<td>Max. Grade: 14.0%</td>
</tr>
<tr>
<td>Min. Stopping Sight Distance: 200 feet; for grades ≥3%, see Exhibit 3-2-2004 AASHTO Green Book</td>
<td>Min. Stopping Sight Distance: 200 feet; for grades ≥3%, see Exhibit 3-2-2004 AASHTO Green Book</td>
</tr>
<tr>
<td>Max e: 8%</td>
<td>Cut Slope: 8%</td>
</tr>
<tr>
<td>Cut Slope: In accordance with Exhibit 2 Project Specifications</td>
<td>Cut Slope: In accordance with Exhibit 2 Project Specifications</td>
</tr>
<tr>
<td>Soil Cut: In accordance with Exhibit 2 Project Specifications</td>
<td>Rock Cut: In accordance with Exhibit 2 Project Specifications</td>
</tr>
<tr>
<td>Rock Cut: In accordance with Exhibit 2 Project Specifications</td>
<td>Fill Slopes: Approximate 2:3H:1V for Preliminary Design (allows for benches)</td>
</tr>
<tr>
<td>Fill Slopes: Approximate 2:3H:1V for Preliminary Design (allows for benches)</td>
<td>Fill Slopes: Approximate 2:3H:1V for Preliminary Design (allows for benches)</td>
</tr>
<tr>
<td>Min Width of Right of Way Limits: 60 feet</td>
<td>Min Width of Right of Way Limits: 60 feet</td>
</tr>
</tbody>
</table>

In addition, Alpha shall perform the preliminary engineering and design work in accordance with the applicable VDOT standards and guidelines for the referenced design speed and grade when developing the horizontal and vertical alignments for the Contract Documents.
EXHIBIT 4
SCOPE OF WORK
FOR
POUND CONNECTOR AND DOE BRANCH SECTIONS

Scope of Work for both Pound Connector Section and Doe Branch Section:

1. Geometric Alignment and Location: A more specific location of the revised alignment for the CFX's rough-grade roadbed (as determined by the Limited Feasibility Study “LFS”) will be obtained in relation to Sections I and II. Such location will be determined by further refining the alignment set forth in the LFS for the identified sections' rough-grade profile. This will be accomplished through the development of preliminary (rough-grade) plans, profiles and associated cross sections of the revised alignment. The rough-grade profiles will be developed using both horizontal and vertical specifications that will conform to VDOT and FHWA geometric standards.

2. Existing Property Lines and Interests: Properties and property lines located within the revised alignments will be identified and preliminary information will be developed through courthouse title and deed verifications, metes and bounds surveys, deed plats and a preliminary property map.

3. Preliminary Investigation of Impacts to Jurisdictional Waters (Waters): For use in determining potential impacts associated with the revised CFX alignment, a wetland/stream assessment of the project area will be completed and submitted to the Corps of Engineers for verification of the Waters in the project area. Tasks or work associated with the assessments will include: 1) checking maps, aerial photos, soil surveys and other relevant sources of the project area, 2) walking the project alignment(s) to identify potential wetlands and streams, 3) completing data sheets for plant communities in the area, 4) flagging the ordinary high water mark of streams and any wetlands for Corps of Engineers' verification, 5) field surveying of the flags using GPS for future use and 6) preparing a report suitable for submission to the Corps of Engineers and Virginia Department of Environmental Quality.

4. Hydraulic and Hydrologic Analyses: Hydraulic and hydrologic analyses will be performed and preliminary design and preliminary engineering of erosion and sediment control structures, stormwater management structures and drainage structures for the alignment(s) will be developed and reported.

5. Utility Information: A utility location and identification analysis, generally equivalent to a quality level C subsurface engineering analysis, will be performed for the purpose of obtaining information as to the location and ownership of utilities within the project area of the revised CFX alignments. This information will be summarized in a utility report and depicted on a utility map.

6. Types and Quantity of Materials on Site: An estimate of the quantity and location of materials requiring excavation will be identified and reported. Alpha, in coordination with VDOT, will develop a general geotechnical investigation plan by utilizing available proprietary geotechnical borings owned and controlled by Alpha, for use in identifying the types of material

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located in the project areas of the revised CFX alignments. The general plan will be used by VDOT to determine the sufficiency of the provided geotechnical information. If VDOT determines that this information is not sufficient from a geotechnical engineering perspective, the plan will be supplemented during final design to increase the frequency and location of borings to obtain additional geotechnical information.

7. Traffic Studies: Preliminary traffic analyses, more specifically maintenance of traffic and temporary maintenance plans, will be developed and reported.

8. Compliance with Other Environmental Laws and Regulations: In anticipation of necessary compliance with the Clean Water Act and other environmental statutes, preliminary design will be undertaken to obtain information relevant to compliance with Sections 404 (Corps of Engineers) and 402 (NPDES), the Endangered Species Act and other applicable statutes. Such information will be compiled in a permit application format.
1.0 INTRODUCTION

This exhibit sets forth the Department’s Oversight Plan referenced in Section 8 of the Amendment. As the PC/DB Project involves federal funding, the Department’s oversight and monitoring activities are subject to applicable Federal Highway Administration (“FHWA”) requirements and agreements. The Department will coordinate with FHWA regarding federal oversight.

Capitalized terms shall have the meanings assigned to them in the Amendment unless otherwise noted.

2.0 OVERSIGHT AND MONITORING

The Department’s Oversight Plan consists of two distinct components: 1) to monitor Alpha’s performance of the tasks identified in the scope of work described in Exhibit 4 of the Amendment, and 2) to review, offer comments and suggestions upon, and approve the Deliverables as developed by Alpha in accordance with the scope of work described in Exhibit 4 of the Amendment.

As a part of its oversight and monitoring activities, the Department shall cause its Project Manager to maintain close communications with Alpha’s Project Manager to ensure the Work is completed in accordance with the requirements of the Amendment.

Alpha will develop and submit to the Department for its approval a Quality Assurance and Quality Control Plan (“QA/QC Plan”) specific to the preliminary design tasks described in Exhibit 4. The approved QA/QC Plan will provide the Department assurance that the preliminary design plans and submittals will adhere to the scope of work as described in Exhibit 4.

All Deliverables will be reviewed prior to submittal to the Department by Alpha’s Project Manager and the Department’s Project Manager, and the joint conclusions therefrom will be memorialized in writing.

3.0 QUALITY ASSURANCE AND QUALITY CONTROL PLAN

The QA/QC Plan submitted by Alpha shall include, at a minimum, the following:

- Procedures for detailed checks of all required Deliverables, and verification of effectiveness and implementation of corrective measures required by the Department as part of their review and approval process;

- Details regarding functions and responsibilities of Quality Assurance organization and Quality Control personnel;

- Procedures to be implemented in the QA/QC Plan to verify comprehensive checking of all calculations, drawings required for the development of the Deliverables;
• Procedures for interdisciplinary reviews by technical and management staff to ensure effective coordination and uniformity among design activities;

• Procedures for the quality control function during design to be provided by design staff independently checking each other's work and performing formal and documented coordination reviews at appropriate times on each of the Deliverables; and

• A QA/QC program for Deliverables developed by subconsultants.

A Design Manager to be assigned by Alpha shall be responsible for overall management of the QA/QC programs for design. This individual shall be responsible for oversight, adherence and implementation of the approved QA/QC Plan.

Alpha shall maintain documentation of implementation of the QA/QC Plan for the duration of the Work. Alpha shall provide to the Department reasonable access and information as required to verify that the QA/QC Plan is adhered to for all Deliverables.
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Consent and Waiver on the date first written above.

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

By: [Signature]
Title: Commissioner

ALPHA NATURAL RESOURCES, LLC,
a Delaware limited liability company

By: [Signature]
Title: [Signature]

RAPOCA ENERGY COMPANY,
formerly known as Pioneer Group, Inc.,
a Virginia corporation

By: [Signature]
Title: [Signature]
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Consent and Waiver on the date first written above.

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

By: ________________________________
Title: ______________________________

ALPHA NATURAL RESOURCES, LLC,
a Delaware limited liability company

By: ________________________________
Title: Executive Vice President & General Counsel

RAPOCA ENERGY COMPANY,
formerly known as Pioneer Group, Inc.,
a Virginia corporation

By: ________________________________
Title: ______________________________
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Consent and Waiver on the date first written above.

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

By: ________________________________

Title: ________________________________

ALPHA NATURAL RESOURCES, LLC,
a Delaware limited liability company

By: ________________________________

Title: ________________________________

RAFOCA ENERGY COMPANY,
formerly known as Pioneer Group, Inc.,
a Virginia corporation

By: Clyde Stacy

Title: President