

**EXHIBIT B**

**PROPOSAL COMMITMENTS**

**[TO BE FURNISHED BY CONCESSIONAIRE]**

- B-1 Project Description and Schematic Design**
- B-2 Initial Baseline Schedule**
- B-3 Outline Project Development Plans**
- B-4 Approved Alternative Technical Concepts**
- B-5 Toll Rates Schedule**
- B-6 Initial Base Case Financial Model**
- B-7 Schedule of Values**
- B-8 Other Proposal Commitments**

**EXHIBIT C**

**FORM OF VIOLATIONS PROCESSING SERVICES AGREEMENT**

**THIS VIOLATIONS PROCESSING AGREEMENT** (the “Agreement”) is dated as of the day of \_\_\_\_\_, 20\_\_\_\_, between the \_\_\_\_\_ (the “Participant”), a \_\_\_\_\_ of the Commonwealth of Virginia, and the Virginia Department of Transportation (“VDOT”), an agency of the Commonwealth of Virginia:

**WITNESSETH:**

**WHEREAS**, VDOT has entered into agreement(s) with one or more third party providers (each, a “VPS Provider”) to supply certain violation processing services for electronic toll collection in the Commonwealth of Virginia, and pursuant to such arrangements, the VPS Provider maintains a violation processing center where vehicle images captured at a toll collection point and for which no toll was paid are reviewed and processed, by the VPS Provider on VDOT’s behalf;

**WHEREAS**, in connection with the operation of \_\_\_\_\_ (“Toll Facility”), the Participant desires to contract with VDOT to obtain certain violation processing services; and

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, VDOT and the Participant hereby agree as follows:

**1. Violations Processing Effective Date, Schedule and Scope of Services.**

a) VDOT shall commence to provide toll violation processing services for the Toll Facility, which services are more particularly described by Exhibit A to this Agreement (the “Violation Processing Services”), beginning as of the date specified (the “Violations Processing Effective Date”),. subject to the terms of this Agreement, including, but not limited to, Exhibit C (Business Rules and Practices) and Exhibit B (Fee Schedule and Payment Provisions).

b) Subject to the limitations of and in accordance with the Business Rules and Procedures, VDOT shall establish, maintain, administer and operate (or cause the establishment, maintenance, administration and operation of) one or more violation processing centers (“Violation Processing Center”) to provide the Violations Processing Services, including all necessary or convenient facilities, data and communication lines, office supplies, equipment and personnel. VDOT may contract with one or more private companies for the provision of such services. VDOT will provide reasonable advance notice to the Participant of any planned changes to the Violations Processing Center location, its operations and/or service

requirements that affect the Participant and will, with good faith cooperation, seek the Participant's comments on any such changes and incorporate mutually agreeable proposals;

c) VDOT shall maintain or cause to be maintained a record of all toll violations processed under this Agreement, including fees, charges and penalties for such toll violations, notices, collections, enforcement requests sent to a third party (such as a collection agency or law enforcement agency), administrative dispositions of such toll violations, correspondence relating to toll violation enforcement, and the outcome or resolution of such toll violations, all in accordance with the Business Rules and Procedures. VDOT shall handle, store and dispose of, or cause to be handled, stored, and disposed of violation images and data, in compliance with applicable laws, including Virginia Code §§ 46.2-819.1 et seq., and the records retention and destruction provisions of the Business Rules and Procedures. To the extent permitted by applicable law, all such records shall be available for audit and inspection by the Participant during normal business hours and upon reasonable notice.

d) VDOT shall perform itself or shall use commercially reasonable efforts to cause the VPS Provider to perform the Violation Processing Services in accordance with this Agreement. If the Participant gives VDOT a written notice stating that the VPS Provider is not performing its duties and obligations, and specifying the reasons, VDOT shall promptly give the VPS Provider notice to such effect and request appropriate action. VDOT shall apprise the Participant of all decisions relating to any such situation and seek and take into consideration the Participant's advice and input relating to any such matters. The Participant acknowledges and agrees that the VPS Provider has the discretion to pursue or not to pursue violations by initiation of legal proceedings, as provided by the Business Rules and Practices.

e) VDOT shall promptly notify the Participant of such events or conditions that are anticipated to materially affect the provision of Violations Processing Services under this Agreement, including with respect to amendments or changes to or matters under the E-ZPass Operations Interagency Agreement and the E-ZPass Reciprocity Agreement.

**2. Participant Policies and Operating Procedures.** The Participant's policies and operating procedures that affect the Violations Processing Services are subject to the review and reasonable approval of VDOT. To the extent that any of the Participant's policies and operating procedures affects the operations of the Violation Processing Center, VDOT and the Participant shall engage in good faith discussions regarding the implementation of such policies and procedures. Should the Participant's policies and operating procedures or any revisions thereto result in any increase in VDOT's cost of providing the Violations Processing Services, VDOT shall immediately advise the Participant of same. The Participant shall reimburse VDOT for VDOT's associated direct costs within 30 days after VDOT shall have given the Participant written notice. Such written notice shall include adequate and detailed documentation of such costs.

### **3. Participate Obligations – Toll Facility System.**

a) In order for VDOT to provide Violation Processing Services, the Participant shall provide, install, maintain and operate at its Toll Facility a reliable and accurate violation enforcement system (the "Toll Facility System"), which shall be compatible with VDOT's system, and shall be capable of capturing a video image of a license plate, and other pertinent information of a vehicle that does not pay the proper toll amount, and shall provide

violation processing capabilities consistent with the further requirements of this Agreement. The Participant shall provide and install all equipment, components, hardware, software, cabling, and any other materials and services required for this function. VDOT and/or the VPS Provider shall provide data formats, documentation, interface requirements and any other necessary design information, including updates and modifications, to the Participant in a timely manner and at no additional cost to the Participant other than as noted in Exhibit B.

b) The Participant shall be responsible for ensuring that the Toll Facility System provides transaction data in the format required by VDOT. The Participant's Toll Facility System shall be capable of capturing a violation transaction, consisting of transaction data and license plate images for each vehicle that does not pay the proper toll either manually or electronically. The captured image shall be associated with the correct transaction and sent to the Violation Processing Center for processing. No image captured by the Toll Facility system shall include the face of any person in the vehicle. The license plate number and state shall be readable to a clerk during review on a violation processing workstation monitor.

c) Should the Participant's system send erroneous data that increases VDOT's cost of providing the Violations Processing Services, VDOT shall immediately advise the Participant of same. The Participant shall reimburse VDOT for VDOT's associated direct costs within 30 days after VDOT shall have given the Participant written notice. Such written notice shall include adequate and detailed documentation of such costs.

#### **4. Maintenance.**

a) The Participant shall be responsible for the maintenance, repair and operation of all necessary lane and computer equipment for its Toll Facility System through and including its host computer to ensure that it performs hereunder and in accordance with the Business Rules and Procedures. In no event shall VDOT have any liability to the Participant for any losses suffered due to equipment failure or error in the Participant's Toll Facility System from the lane level through the Participant's host computer. If VDOT gives the Participant a written notice stating that the Toll Facility System is not operating in accordance with this Agreement or the Business Rules and Procedures, and specifying the reasons, the Participant shall promptly initiate appropriate corrective action. The Participant shall include VDOT in all decisions relating to any such situation. The Participant shall notify VDOT of all changes in the Toll Facility Systems that can reasonably be anticipated to affect VDOT or its provision of Violation Processing Services under this Agreement.

b) VDOT shall be responsible for the maintenance, repair and operation of its Violation Processing system commencing from (but excluding) the Participant's host router and extending through and including telephone lines, routers, and black boxes within the Violation Processing Center.

**5. Additional Plazas and Lanes.** The parties acknowledge that this Agreement provides only for Violations Processing Services in respect of the Toll Facility. Violations Processing Services for additional plazas and lanes may be added pursuant to mutual written agreement.

#### **6. Modifications; Testing Procedures and Results.**

a) The Participant will be responsible for any and all system maintenance, changes, modifications or upgrades to its Toll Facility System. All changes, modifications or upgrades to any of the Participant's Toll Facility equipment or other system modifications shall be compatible with VDOT's operations and otherwise satisfy the requirements of this Agreement. Either party shall notify the other in writing at least 90 days in advance of any changes or modification to such party's violations processing system equipment that may affect the other's system, equipment, provision of services or operations in any material respect.

b) VDOT or its representatives will participate in acceptance testing and must approve testing of upgrades or other modifications to the Participant's Toll Facility System, prior to processing of live violations through the Violations Processing Center. VDOT shall give the Participant advance notice of VDOT's testing of upgrades or other modifications to VDOT's Violations Processing system, including a successor to the then-current VPS Provider or Violations Processing Center, and shall allow the Participant or its representatives an opportunity to participate in such testing.

c) In the event either party proposes upgrades or modifications, such party will provide proposed test schedules and scripts for such upgrades or other modifications to the other party and the VPS Provider at least 60 days in advance of testing. In the case of upgrades or modifications to the Participant's Toll Facility System, VDOT may require additional tests to be undertaken at the Participant's expense in order to confirm the accuracy and reliability in all aspects of the processing of violations. Copies of test results shall promptly be made available to the other party and the VPS Provider.

#### **7. VDOT Standard of Care.**

VDOT will exercise due care and diligence in providing Violations Processing Services, planning and implementing modifications, upgrades and associated testing of its Violations Processing system at levels which are reasonable given the schedule, scope and budget for such system. However, VDOT expressly disclaims any and all liability for, and provides no guarantee against, system failures, interruptions or other malfunctions. While precautions will be taken by VDOT to help mitigate the risk of occurrence of such adverse impacts, VDOT shall not be financially responsible for the occurrence of adverse impact to the Participant or other third parties.

**8. System Performance.** Both the Participant and VDOT shall report to the other within two (2) business days any system failure or degradation that may affect Violations Processing Services. In the event that the Participant is unable to send transactions for periods in excess of two (2) business days, the Participant must notify the manager of the Violations Processing Center prior to sending any backlogged violations transactions. If the Violations Processing Center is unable to process violation transactions for the Participant for any period in excess of 24 hours, VDOT shall notify the Participant within two (2) business days of such occurrence.

**9. Disputed Transactions.** Disputed transactions shall be resolved as set forth in the Business Rules and Procedures.

**10. Term.** The term of this Agreement (the "Term") shall commence upon the date of this Agreement, and shall terminate on that date which is the earlier to occur of:

a) the effective date on which this Agreement is terminated by either party, as specified by delivery of written notice to the other party, or

b) June 30, 20 , subject to automatic renewal for successive one year extensions, unless and until terminated by written notice delivered by either party to the other party at least 120 days prior to the end of the then current Term.

**11. Termination of VPS Operations.** VDOT shall notify the Participant of VDOT's intention to terminate its existing agreements with VPS Providers, its operations of its Violation Processing Center, and/or the provision of Violations Processing Services

**12. Relationship to ETC Agreement.** Violations Processing Services hereunder shall not constitute "ETC Services" under and as defined in the Electronic Toll Collection Agreement between the Participant and VDOT (the "ETC Agreement").

**13. Payment Terms.**

a) The Participant shall compensate VDOT for Violations Processing Services, by payment to VDOT of the fees and charges set forth in Exhibit B (as amended from time to time). The parties acknowledge that Exhibit B contains a non-refundable initial set-up payment, in addition to ongoing transaction fees and charges. VDOT reserves the right to amend Exhibit B to revise, from time to time, the charges and fees for providing Violations Processing Services under this Agreement, which revisions shall take effect on such date as established by VDOT, but in no event before the expiration of 60 days from the delivery of notice of the revised charges and fees to the Participant.

b) VDOT shall invoice the Participant on a monthly basis for the Violation Processing Services in accordance with Exhibit B. The Participant shall remit payment to VDOT within 30 days of delivery of each such invoice.

c) All violations revenue (tolls, v-tolls and administrative fees) shall be deposited monthly into the Participant's account pursuant to payment instructions provided by the Participant.

**14. Business Rules and Procedures.** VDOT shall establish, maintain and amend, from time to time, the Business Rules and Procedures for Violation Processing Services. The current Business Rules and Procedures are annexed to this Agreement as Exhibit C. Any anticipated amendments shall be presented by VDOT and discussed at liaison meetings. VDOT will, in good faith cooperation, try to accommodate changes proposed by the Participant. However, VDOT has sole authority to amend the Business Rules and Procedures, which amendments shall take effect on the date established by VDOT, but no sooner than the expiration of 90 days after delivery of written notice of the amendments to the Participant.

**15. Liaison and Meetings.** It is intended that the Participant, VDOT and VPS Providers shall coordinate the administration and performance of this Agreement with each other and conduct periodic meetings and liaison sessions to ensure the efficient provision of Violation Processing Services and the resolution of disputes that may arise under this Agreement.

**16. Dispute Resolution.** Any dispute that may arise between VDOT and the Participant shall be mutually resolved through the best efforts and good faith negotiations between VDOT and the Participant. In conducting such negotiations, VDOT and the Participant recognize that in drafting this Agreement, it is impracticable to make provisions for every contingency that may arise during its Term. Accordingly, in order to achieve the resolution of any dispute concerning matters for which the Agreement provides no clear guidance, VDOT and the Participant concur that this Agreement imposes a duty to negotiate in good faith. If either of the parties resorts to legal action in connection with any dispute arising under this Agreement, venue shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

**17. Default and Remedies.**

a) Generally. Failure by either VDOT or the Participant to fulfill its respective responsibilities set forth in this Agreement shall constitute an event of default under the terms of this Agreement. Following upon delivery of notice of default by the non-defaulting party to the defaulting party, and failure to cure within the agreed upon period, the Agreement may be terminated in accordance with Section 17(b) or 17(c) .

b) Cure Period. Both parties shall determine a mutually agreeable cure period. If the parties cannot reach agreement on what constitutes a reasonable cure period then VDOT shall make the determination, taking into account the corrective measures to be instituted promptly and pursued diligently by the defaulting party, including with respect to the act or omission of any VPS Provider. Following expiration of the cure period, unless extended by mutual agreement, the non-defaulting party shall have the right to terminate this Agreement by delivery of written notice to the defaulting party. Termination shall become effective on the date specified by such notice.

c) Exclusive Remedy. The Participant acknowledges and agrees that its sole remedy in the event of a default by VDOT shall be to terminate this Agreement in accordance with the terms of this Section 17. VDOT shall incur no liability to the Participant for any actual or purported failure to properly maintain, repair or operate its Violations Processing system and the Violation Processing Center or otherwise provide Violations Processing Services hereunder. However, in the event of a default that arises by reason of the failure of a VPS Provider to perform its contractual obligations to VDOT and VDOT is able to recover damages from that VPS Provider with respect to such failure, VDOT shall remit to the Participant such portion of the recovered damages as VDOT determines in its sole judgment to be appropriate and shall advise the Participant of the rationale for its determination.

d) Except as otherwise expressly provided by this Agreement, neither party shall have any liability to the other party for consequential damages.

**18. Miscellaneous**

a) Waivers, Modifications and Amendments. No waiver, consent, approval, or modification or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing and signed by both VDOT and the Participant, except for amendments to Exhibits B or C which are subject to amendment by VDOT in accordance with the terms of this Agreement.

b) Captions. Captions, headings, cover pages and tables of contents contained in this Agreement are inserted for convenience of reference only and in no way define, limit or prescribe the scope, intent or meaning of any provisions of this Agreement. All appendices, exhibits, or schedules attached hereto are hereby incorporated herein and made a part of this Agreement.

c) Notices. All notices shall be in writing and shall be delivered personally, by telecopy, or by registered or certified mail, return receipt requested, addressed as follows:

**Participant Mailing Address**

**VDOT Mailing Address**

Attention:  
Telecopier:

Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219  
Attention: Director, Innovative Finance and  
Revenue Operations  
Telecopier: 804-780-6250

d) Entire Agreement. This Agreement constitutes the entire agreement between VDOT and the Participant concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements about them, either oral or written.

e) Force Majeure/Emergency. In case by reason of force majeure, either party shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then, provided such party shall give notice and full particulars of such force majeure in writing to the other within a reasonable time after occurrence of the event or cause relied on, the obligations of such party so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. Any time period specified herein for the performance by such party of an obligation shall be appropriately adjusted and extended without the necessity for any amendment to this Agreement if a force majeure event occurs.

f) Governing Law. This Agreement shall be governed by laws of the Commonwealth of Virginia. In addition, in all cases this Agreement including the Business Rules and Procedures shall conform to and be interpreted in light of applicable law, including but not limited to Virginia Code §§ 46.2-819 et seq., as in effect from time to time, and such law shall govern in the event of any inconsistency with this Agreement.

g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**IN WITNESS THEREOF**, this Violations Processing Agreement has been entered into as of the first date set forth above, by the duly authorized officers of the parties hereto.

**VIRGINIA DEPARTMENT OF**

**TRANSPORTATION**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **ATTACHMENT 1 TO EXHIBIT C**

### **SCOPE OF SERVICES**

Violation Processing Services hereunder shall generally include:

1. Providing a manual image review of images and data transmitted from the Participant for the Toll Facility.
2. Rejecting violation transactions that fail to meet appropriate criteria including image quality, valid transaction data, and front license plate image for tractor/trailer combinations.
3. Identifying and communicating systematic issues with violation quality to the Participant.
4. Processing requests from the participant for specific violations dismissals due to equipment or other issues.
5. Posting the transaction to the appropriate account for images associated with valid EZ-Pass accounts by transponder, license plate or vehicle owner name and address.
6. Obtaining from the appropriate Department of Motor Vehicles or third party data provider the name and address of the owner associated with the recorded license plate number of each violating vehicle.
7. Issuing by mail to such individual or entity one or more toll violation notices according to business rules.
8. Quality control on the accuracy and appearance of notices.
9. Escalating unpaid violations and amounts due according to business rules and issuing follow up notices.
10. Imposing and collecting fees and tolls for toll violations, and waiving or crediting such fees and tolls.
11. Providing customer service to support violation resolution via the web, in person service centers and telephone.
12. Processing disputes for leased and rental vehicles and assigning violations to the driver of the vehicle.
13. Providing financial and processing reports as necessary for the Participant to audit violation activity.

14. For unpaid violations meeting necessary criteria, as defined by the Participant, issuing summons by mail and by delivery to the appropriate sheriff and attending court hearings with the necessary evidentiary information.
15. Recording and communication to the Participant the disposition of any court hearings.
16. Working with the Participant on an ad-hoc basis to provide information to identify and allow the Participant to pursue egregious violators.

This scope of services may be modified periodically to reflect funding constraints, modified business processes and new activities that are identified as beneficial to the violation processing program.

**ATTACHMENT 2 TO EXHIBIT C**

**FEE SCHEDULE/PAYMENT PROCEDURES**

A. Preliminary Fee/Cost Schedule. Following is the preliminary fee schedule, which is subject to change as provided in Part B of this Exhibit B. Once the actual rates are established they will be reviewed and reset annually based on actual experience and operating costs, as provided in Part B of this Exhibit B.

Fees will be assessed according to the following activities undertaken by service center:

- V1 – a transaction fee for each violation received by the central system;
- V2 – a transaction fee for each V-Toll processed by the central system;
- V3 – a system amortization fee allocated based on DMV volume;
- V4 – a processing fee assessed for each DMV look-up;
- V5 – a transaction fee for each violation payment processed;
- V6 – a transaction fee for each violation administrative fee payment processed;
- V8 – a fee as a percentage of the value of violation payments processed (This percentage will be based on the average credit card and other financial transaction processing fees per violation dollar processed).
- V9 – actual costs incurred in pursuit of violations subsequent to mailing a final notice including costs to issue summons and attend court hearings or pursue unpaid violations via collections. The ceiling on these costs will be agreed in advance with the Participant.

<b>Fee</b>	<b>Unit</b>	<b>Value</b>
<b>V1</b>	<b>Per Violation Image Loaded</b>	<b>\$0.10</b>
<b>V2</b>	<b>Per V-Toll</b>	<b>\$0.17</b>
<b>V3</b>	<b>Per DMV Look-up</b>	<b>\$0.78</b>
<b>V4</b>	<b>Per DMV Look-up</b>	<b>\$1.20</b>
<b>V5</b>	<b>Per Notice</b>	<b>\$2.01</b>
<b>V6</b>	<b>Per Payment</b>	<b>\$7.56</b>
<b>V8</b>	<b>Percentage Fee</b>	<b>2.10%</b>
<b>V9</b>	<b>Actual costs incurred on behalf of Participant</b>	<b>Tracked monthly</b>

Fees are progressive. By way of example, a violation that is cleared at the V-Toll stage would have \$0.27 netted against the toll; a violation that proceeds through collection at the Violations

Processing Center after a single notice would be assessed \$11.65. Operators will also be invoiced monthly fee of 2.10% of payments processed.

In addition, the Participant shall pay VDOT an initial set-up fee of \$0.00, within thirty (30) days following delivery of an invoice for such sum by VDOT to the Participant.

**B. Procedures for Establishment and Payment of Fees and Costs.**

The foregoing costs and fees are preliminary and subject to change as provided below in connection with VDOT's annual review of the costs of providing Violations Processing Services.

Costs and fees under the Violations Processing Agreement shall cover the Participant's share of the costs of providing Violations Processing Services. VDOT shall review and, if appropriate, establish revised costs and fees on an annual basis and use its best efforts to provide notice thereof by April 1 in any year (for purposes of meeting the Participant's budget preparation cycle), and in any case provide not less than 3 months notice of any proposed amendment and modification thereof and the effective or implementation date of any such revised costs and fees.

The Participant shall pay all such costs and fees, as provided in Section 13 of the Violations Processing Agreement.

**ATTACHMENT 3 TO EXHIBIT C**

**BUSINESS RULES AND PROCEDURES**

**Virginia Department of Transportation**  

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**E-ZPass Service Center**  
**Violations Processing Business Rules**

**Version 1.2a**

**VDOT E-ZPass Violations Processing Center  
1504 Chestnut Street  
Clifton Forge  
Virginia 24422-1234  
Phone: 540-862-8637**

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## **1. Introduction**

This document defines the business rules governing violation processing for the Virginia E-ZPass Customer Service and Violations Processing Center (the "Service Center"). The business rules were developed using several guidelines consisting of VDOT RFP 137-R0 (and addenda) and § 46.2-819.1. of the Code of Virginia. As business rules are modified or newly introduced, this document will be updated following the same process used to update the Virginia E-ZPass Service Center Operations Manual. Rules which do not apply to Open Road Tolling, e.g., AVI-only transactions, are marked with an asterisk.

The document is organized into sections as follows:

- 1. Lane Level**
- 2. Violation Filtering**
- 3. Queue Processing**
- 4. Violation Notice Processing**
- 5. Dispute Processing**
- 6. Payment Processing**
- 7. Court Processing**
- 8. Purging Violation Data**

## **2. Violation Processing Business Rules**

### **2.1. Lane Level**

Violations are assigned unusual occurrence ("UO") codes based upon the type of transaction. As image files are loaded into the VPS for processing, the loader will consider these UO codes to determine how the violation record will proceed. The rules associated with applicable UO codes are defined as follows:

#### **2.1.1. Run Through**

No transponder is read and no payment is collected. These violations are transmitted to the Service Center for processing after clearing the violation filtering process. Run through's can occur in any type of lane, e.g., attended or full-service lanes, exact change or E-ZPass lanes.

#### **2.1.2. Insufficient Funds Transaction\***

This occurs when a collector provides the patron with an unpaid toll receipt indicating the patron did not have money to pay. The collector provides instructions on how to send payment

to the Service Center. The payment will be matched with the unpaid toll if received within the configured period of time (10 days) and the violation will be dismissed. This functionality must be configured at the lane level where a flag is set in the tag file indicating that an insufficient funds transaction occurred. Insufficient funds transactions may only occur in full- service lanes operated by a toll collector.

### **2.1.3. Partial Payment**

Patron deposited an amount lower than the expected toll in the coin basket (these violations are filtered, e.g., are not sent to the Service Center for processing). Partial payment transactions only occur when a payment is made in a lane equipped with an automated coin machine.

### **2.1.4. Insufficient Funds Transponder**

Patron's transponder was read in the lane but the account to which the transponder was assigned is in an insufficient status. The violation record will proceed to the Service Center where it will be held for 5 days, during which time the Service Center will attempt to post the transaction to the account, if not successful the record will continue to be processed as a violation. An insufficient funds transponder transaction may occur in any AVI-equipped lane.

### **2.1.5. Class Mismatch**

This occurs when a transponder read indicates a class that is different from the class assigned by the lane. The fare provided by the lane is posted to the customer account and image loader ignores the UO code and does not load this transaction as a violation. Class mismatches may occur in any AVI-equipped lane.

## **2.2. *Violation Filtering (VF)\****

VF will examine every transaction generated by the lane controllers. The transactions that VF will use will come from the lane controllers and flow into a Transaction File Manager (TFM) that will run on the VES Host. When VF sees a violation transaction, it stores a record of the violation in a designated database table that resides on the VES Host. VF examines each subsequent transaction message to determine if the transaction indicates that the patron may have attempted to pay the toll. If such a reason is found, VF marks the violation record with a code number indicating that the violation should be filtered from the normal violation process. The data VF creates and writes to database will be used as part of the process that sends the evidence packages to the Violation Processing System (VPS). Each evidence package containing violation image and data that arrives at the VES Host will be stored in a database table. Records of images that are assigned a filter reason code other than violation will not be sent to VPS, these will be retained on the VES Host for 6 months. VF looks for the following subsequent events:

### **2.2.1. ACM Failure**

A patron may have attempted to pay the toll with coins before the lane controller was aware that the ACM was disabled.

### **2.2.2. AVI System Failure**

A patron may have attempted to pay the toll with an AVI tag before the lane controller was aware that the AVI system was disabled.

### **2.2.3. VCS System Failure**

When the status of any critical device (IDRIS, loop, light curtain, treadle) is reported by the lane, VF filters out the violations up to a configurable amount of time or transactions.

### **2.2.4. Resync Rules**

VF will filter out transactions with a specific resync value.

### **2.2.5. Excessive Violations**

A patron may have attempted to pay the toll during a time that either the ACM or AVI is disabled, but either the lane controller is not yet aware of the problem, or the system is disabled in a way that is not detectable. Examples of the latter are the AVI antenna is tilted away from the road or the coin basket is blocked. The lane declares an excessive violations condition if there are X consecutive violations (default value of X depends upon lane type and may be values of 2, 3 or 5).

### **2.2.6. ACM Duration Event**

Patron behavior in an ACM lane will be filtered out if the ACM detects coins and the vehicle leaves the lane before all coins were counted.

### **2.2.7. Lane Restart**

The lane may have been rebooting when the patron attempted to pay the toll, so the lane controller did not register the toll.

### **2.2.8. Lane Closure**

The lane may have been in an unstable state prior to closing, so if the lane is closed, the system assumes no violations in this mode will be captured.

### **2.2.9. Start/Stop Degraded Mode**

VF can be configured to filter out transactions for a set time before the lane declares a Start degraded mode. This event is usually followed by a Stop degraded mode message once the lane recovers and VF can continue to filter a set amount of vehicles or time after this event occurs.

### **2.2.10. ACM Over-Payment**

VF will look back 5 transactions to forgive the latest violation if one existed.

### **2.2.11. ACM Lane Update**

VF will look back 5 transactions to forgive the latest violation if one existed.

### **2.2.12. Heartbeat Transaction**

VF checks for all questionable violation transactions that have all flags set to Y and declares those valid violation transactions. Any questionable transactions (all flags are not set to Y) that are more than 4 hours old (default value) are declared inconclusive violation transactions and are filtered out.

### **2.2.13. Rejected Coin Transaction**

VF will filter out all rejected coin transactions.

## **2.3. Queue Processing**

The violation processing system utilizes automated processing of queues to move violations in and out of various statuses. Many business rules are configured within the queue processing procedures. Business rules are also applied in manually processed queues. Queue processing begins with image loader and ends with notice generation. Queue processing business rules include:

### **2.3.1. OCR Confidence Levels**

The system is set to route 100% of all qualifying violations to plate ID regardless of the OCR confidence level.

### **2.3.2. Insufficient Transponder Check**

At image loader if a transponder is found in the tag file, the system will check the Service Center account to see if the account has sufficient funds to post a v-toll.

If it does, the violation record will be rejected and a v-toll will post to the account. If it fails to post it will proceed to v-toll retry queue.

### **2.3.3. Plate Identification This is a manual queue.**

#### **2.3.3.1. Certification**

To certify a violation record the license plate characters must be clear and unobstructed and the plate jurisdiction must be readable.

#### **2.3.3.2. Rejection**

From time to time associates are instructed by VDOT to reject violation records at certain plazas and lanes. This is only done with direction from VDOT.

Standard reject rules are:

- Reject if plate characters are obstructed or not clear
- Reject if plate jurisdiction is not readable
- Reject if no front shot is available and license plate is on a trailer being pulled by a tractor
- Reject Emergency Vehicle Plates (Fire, Ambulance, EMS and State Police Vehicle)

#### **2.3.4. License Plate V-toll Check**

After plate ID, the system will check the plate characters and jurisdiction entered against the license plate database for EZ-Pass Virginia first. If an account is found and is sufficient, a v-toll will post to the account and the violation will be dismissed. If an account is not found the violation will go next to the IAG license plate database. If a match is found the violation will be dismissed and the v-toll information will be collected for transmission to the away agency. If a valid account is found in the EZ-Pass VA license plate database but the account is in insufficient status, the violation record will proceed to the v-toll retry queue.

#### **2.3.5. V-toll Retry**

When insufficient at plate check or transponder check it is not able to post a v- toll, the violation record will remain in a holding queue and will try to post the v- toll each day for five consecutive days. If it fails to post on the sixth day the violation will proceed on as a valid violation.

#### **2.3.6. Unpaid Toll Check\***

Violations that have been flagged as insufficient funds at the lane (UOcode9 unpaid toll transaction) will proceed to the unpaid toll queue. After plate ID the violation will be held in the unpaid toll queue awaiting a payment match. If after 10 days no match is found the violation will proceed on as a valid violation.

#### **2.3.7. Sampler Queue**

The sampler queue is used as a quality assurance review for selected associates. Selected associates are set up so a percentage of the violation records that are reviewed at plate ID will be re-routed back through plate ID for a second review. Re-reviewed records are scored by percentage if they are re-identified differently by the second reviewer.

#### **2.3.8. DMV Records Processing**

Virginia, Pennsylvania and Maryland license plates are routed directly to their state's DMV for owner information. License plates for most other states (some are excluded) are routed to LES (a contracted vendor) for processing.

#### **2.3.9. Plate Confirmation**

This is a manually processed queue. Plate confirmation queue contains plates that were returned unknown by the DMV processor. Associates review this queue and correct any information that may have not been entered correctly. The re-identified record will be routed back to plate check queue if the plate information was changed or to registration pending queue. This is for the first look-up only. The next time that plate receives a no-match the plate will go to registration pending. Registration pending plates will be retried 5 times and if no match is found the record will age out.

### **2.3.10. New Party**

This is a manually processed queue. When the DMV returns a record that is similar, but not the same for an existing party in the system, the associate processing this queue will link or un-link the new record to the existing party record. The business rules that are applied will link a party with a name and address that is similar to the existing party and un-link the party if the name and address is clearly not the same. Records will not age out of this queue if unprocessed.

### **2.3.11. DMV Pending**

DMV Pending queue is an automated queue. Records that are not returned by the DMV will remain in this queue and will be picked up each time the DMV records are processed to the DMV processor. If no, response record is returned after 90 days, the record will age out of the queue.

### **2.3.12. 2.3.12. Pre-Classify and Classify**

The pre-classify and classify queues will determine if a party has previously been qualified within the violation processing system as a violator. The business rule that is applied is as follows:

The first violation for a party will wait 90 days for a second violation to occur. If a second violation does not occur within 90 days the first violation will be dismissed. After the party has achieved 2 violations within 90 days from that point forward each new violation occurring will be held until the next processing day then will proceed to Classify for processing into the Final Review manual queue. The reason that the violations are held for a day are so that multiple violations (up to 20) for that day will be issued on one notice. If one party violates 21 times in a day a second notice will be issued.

### **2.3.13. Final Review Certify Criteria**

Final review is a manual queue process. VDOT has very specific requirements regarding the quality of the image that is selected for the violation notice. The business rule governing this is that the image must be a clear image of the vehicle profile (preferably in color). This image must be readable to the extent that we can identify the make of the vehicle and clearly identify the plate characters. If the plate characters are not perfectly clear, we can certify if there is an ROI image that is clearly the same plate with an irrefutable image of the plate characters. If a suitable image is not available for the group of images available for the notice, we send the entire group of images to reclassify.

#### **2.3.14. Final Review Reclassify Criteria**

When a violation notice is sent to reclassify it will stay in the classify queue until another qualifying violation for an existing party enters the system. The system will link the party to the records in classify and send the package of records back to final review for processing. Reclassified violations will age out after 180 days if no new violation record enters the system.

#### **2.3.15. Final Review Reject Criteria**

Business rules for rejecting violation records at final review are:

- Reject toll facility vehicle violations
- Reject US Government vehicles violations
- Reject if DMV information does not match image (e.g.: if DMV returns a vehicle make that does not match the image)

#### **2.3.16. Document Generation**

When a document is generated to the print outsource file, there will be a 3 day offset to the issue date to allow for printing and mailing time.

#### **2.3.17. Filters 1 and 2**

Currently filter 2 is being used to filter toll collector violations. Toll collector plates are provided by the Facility Operators on an ad hoc basis. Any request for filtering in filter 1 or filter 2 must come directly from VDOT or a Facility Operator.

### ***2.4. Violation Notice Processing***

#### **2.4.1. Toll Violator Notice (TVN) and TVN Customer (TVNC)**

Business rules related to toll violation notices are as follows:

1. Dispute or payment must be made within 30 days
2. Amount due will be one administration fee and all tolls associated with the violation events itemized on the notice
3. Toll violation notice will contain all violation events for the party occurring within a 24 hour period up to 20 violation events.

#### **2.4.2. Final Notice (FN) and FN Customer (FNC)**

If the toll violation notices is not resolved within 30 days of notice issuance date, it will automatically escalate to final notice status.

Business rules related to final notices are as follows:

1. Dispute or payment must be made within 14 days or all open violations on the notice will be subject to a summons being generated.
2. Amount due will be one administration fee for each violation escalated all tolls associated with the violation events itemized on the notice
3. Final notice will include all violations from the original notice that have not been paid or dismissed.

## **2.5. Dispute Processing**

### **2.5.1. Ad hoc**

An ad hoc dispute is one that does not fit into any other designated dispute category. The business rule governing ad hoc disputes is that it will be escalated to the facility operator for a ruling prior to being accepted or rejected.

### **2.5.2. Leased Rental**

The business rule governing leased rental disputes is that the appellant must provide a lease or rental contract or copy to the Service Center via mail. If the violations occurred during the contract period, the violations will be reassigned to the renter or lessee and the rental agency or lessor's violation notice will be dismissed. If the contract is not provided or if the violations occurred outside of the contract period the dispute will be rejected.

### **2.5.3. Customer Dispute**

Consistent with VDOT's intention we try to be customer friendly when dealing with customers who receive violation notices. The degree to which leniency is applied depends upon the general criteria outlined below:

#### **2.5.3.1. E-ZPass Virginia Customers**

An E-ZPass Virginia customer may enter their dispute as follows:

- Walk in or call the Service Center providing their account information. The dispute will be processed and if the account is in good status the appeal will be accepted and v-tolls for the violations will be posted to the customers account. If the account is not in good standing the appeal will be rejected. Associate handling the call will inform the customer that the account must first be funded to process a dispute.
- Enter a dispute via the Web. The dispute will be processed and if the account is in good status the dispute will be accepted and v-tolls for the violations will be posed to the customer's account. If the account is not in good standing the appeal will be rejected. Customer will be advised to contact the Service Center for assistance.
- Mail dispute to Service Center for processing. The dispute will be processed and if the account is in good status the dispute will be accepted and v-tolls for the violations

will be posed to the customer's account. If the account is not in good standing the appeal will be rejected. Customer will be advised via a dispute rejection letter.

#### **2.5.3.2. 2.5.3.2. IAG Customer Dispute**

Customers from away agencies are required to mail an account statement to the Service Center since account information is not readily available. These IAG customer disputes are processed as follows:

- Mail dispute (including statement) to the Service Center. The dispute will be processed and if the plate information entered matches the away agency license plate data, the violation notice will be dismissed and v-tolls will be processed to the away agency. If a match is not found the dispute will be rejected and the customer will be notified via mail.

#### **2.5.4. Sold Vehicle**

Dispute must be mailed to the Service Center. Dispute must be accompanied with a signed vehicle title or receipt of sale as record of vehicle sale. If the violations on the notice occurred after the vehicle was sold this dispute will be accepted and the notice will be closed. If the violations did not occur after the vehicle was sold or no proof of sale is provided the dispute will be rejected.

#### **2.5.5. Stolen Vehicle**

Dispute must be mailed to the Service Center. Dispute must be accompanied with a police report or copy. If the violations on the notice occurred after the vehicle was stolen this dispute will be accepted and the notice will be closed. If the violations did not occur after the vehicle was stolen or no police report is provided the dispute will be rejected.

#### **2.5.6. Sinner to Saint**

If a violator contacts the Service Center and wishes to open an account, the associate has the authority to provide amnesty for the violations that have occurred as follows:

- 1st Notice - Advise the violator to open an account with sufficient funds to cover cumulative tolls on the violation notice(s) and waive the \$25.00 administrative fee.
- Final Notice - Advise the violator to open an account with sufficient funds to cover cumulative tolls and 50% of the administrative fees on the violation notice(s), and waive the remaining 50% of the administrative fees.
- After the account has been opened, process the customer dispute causing notice to be closed and v-tolls and administrative fees, if applicable, to post to the newly opened customer account.

### **2.5.7. Returned Mail**

When violation notices are returned to the Service Center they are processed according to the following business rules:

- If the returned mail has a forwarding address, the associated will enter the postal service provided address and reissue the document. The document will be reissued with a new document issue date.
- If the returned mail does not have a forwarding address, the document will be put
- on administrative hold for a configurable period of time (currently 999 days)

## **2.6. Payment Processing**

### **2.6.1. Payment Methods and Locations**

Customers are provided with numerous opportunities to pay violation notices.

#### **2.6.1.1. Payment Methods**

The following are the payment methods accepted for violation payments

- Cash (walk in locations only)
- Visa, Master Card, American Express, Discover
- Check
- Money Order

#### **2.6.1.2. Payment Locations**

The following are the payment locations available for violation payments

- Walk in locations (Gloucester Point, Herndon, Richmond)
- Phone or Mail (Clifton Forge)
- Credit Card (All locations including Web)

### **2.6.2. Unpaid Tolls\***

Unpaid tolls must be received at the Service Center for posting within 10 days of the unpaid toll receipt being issued. If payment is not received the record will proceed in the workflow as a violation. Only unpaid toll payments matching a transaction from the lane will be reported on the facility disbursement report.

### **2.6.3. Prepaid Tolls**

Prepaid tolls are accepted in the Service Center. If it is possible to find the violation and reject it the Service Center will attempt to do so. The payment will be posted regardless of whether a corresponding violation was found or not. Prepaid tolls will not be reported on the facility disbursement report.

### **2.6.4. Refunds**

Violation overpayments due to actual overpayments or payments for violations that have been dismissed are processed as refunds 30 days after the payment was posted.

### **2.6.5. Returned Checks**

Checks for violation payments that are returned for insufficient funds or closed account are assessed a fee of \$35. The returned check fee is added to the total amount due on the violation notice which will be reopened and escalated according to the document escalation rules.

### **2.6.6. Credit Card Disputes**

No fee is assessed on violation payments for credit card disputes.

## **2.7. *Court Processing***

Court processing is a combination of automated and manual processes and business rules are applied both by the system and by associates processing the court data.

### **2.7.1. Qualification Criteria**

In order to qualify for a summons the following business rules govern:

- The party has had 3 or more unpaid tolls per facility
- The party has failed to pay or successfully dispute their violations for a period greater than 45 days

### **2.7.2. Summons**

Summons will be queued up as violations meet the criteria for summons processing. As court dockets will allow, associates will select summons to be escalated to court and will generate summons documents. One summons will be generated for each violation record. Once a summons has been generated, the Service Center will no longer be able to post a payment or process a dispute.

Summons amounts will include: civil penalty admin fee, toll, and any other charges. At the hearing the judge will also apply court charges.

Rules governing civil penalties are as follows:

- 1<sup>st</sup> offence \$50 civil penalty
- 2<sup>nd</sup> offence \$150 civil penalty
- 3<sup>rd</sup> offence \$250 civil penalty
- 4<sup>th</sup> offence \$500 civil penalty

### **2.7.3. Mailing**

- Summons will be mailed directly to the violator from the Service Center
- Two copies of the summons will be sent to the service processor along with a certificate of posted mailing. The service processor will serve the summons and forward certificate of posted mailing to the court when that has occurred.
- Summons will be organized by court date/court location they will be sent to the court where case will be heard

### **2.7.4. Service**

In order for a case to be properly adjudicated, an authorized officer must serve the summons or post it for service at the violator's place of residence. If service officer is not able to provide service, the court may not be able to adjudicate the case.

### **2.7.5. Court**

Each court will be provided with an electronic file and also a paper copy of all summonses for each day's docket(s). Court will communicate with Service Center when cases are rescheduled or prepaid.

### **2.7.6. Evidence Package**

Court Specialist will prepare evidence packages for each case and bring them to the court on the day of the hearing. Court Specialist will be on hand to assist the judge with any questions or provide evidence package as requested.

### **2.7.7. Court Scheduling**

The Service Center will work directly with the clerk of court in each location to identify available court docket time and fill them with toll violation cases.

### **2.7.8. Court Dispositions**

Court Specialist will enter court disposition determined by the adjudicating judge at the hearing. The following business rules govern summons dispositions:

- Guilty — violation will be closed in the VPS and payment will be received by the court

- Not Guilty — violation will be closed
- Collections — violation was not able to be adjudicated so violation will remain open in the VPS and can be processed further via payment made to the Service Center or through a third party collection agency
- Continued — Judge leaves open with new hearing date.

### **2.8. *Purging Violation Data***

Each month, a process will run to purge violation records pursuant to § 46.2-819.1. of the Code of Virginia. The business rules governing violation purging are as follows:

- Paid in full violations — When all violations associated with a party are paid in full all violation records will be purged.
- Dismissed in full violations — When all violations associated with a party are dismissed in full all violation records will be purged.

Paid by Court disposition violations — Cases marked as Guilty as a result of a hearing will not be purged unless or until it can be verified that amounts due have been paid in full and the payments have been reconciled.

**EXHIBIT D**

**FORM OF ELECTRONIC TOLL COLLECTION AGREEMENT**

**THIS ELECTRONIC TOLL COLLECTION (ETC) AGREEMENT** (this “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2007, by and between VIRGINIA DEPARTMENT OF TRANSPORTATION (“VDOT”) and \_\_\_\_\_ (the “Participating Agency” or “Participant”).

**WHEREAS**, VDOT is the owner and operator of the Virginia E-ZPass Toll Collection System;

**WHEREAS**, the Participant is the owner and operator of (name of facility), publicly owned and operated toll road;

**WHEREAS**, the parties have installed and operate compatible electronic toll collection systems for their respective roadways;

**WHEREAS**, VDOT is responsible for providing ETC Services (“ETC Services”) for the Participating Agencies. The Participant and VDOT desire to enter into this Agreement to provide for, among other things, ETC Service as it relates to (name of facility); and

**WHEREAS**, VDOT has joined the E-ZPass Interagency Group (IAG) on behalf of itself and other Participating Agencies. The E-ZPass Reciprocity Agreement is attached hereto as Appendix A and is considered part of this ETC Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and the Participant hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

For purposes of this Agreement, the terms set forth below shall have the meanings set forth beside them.

Authorized Department Representative	Person or officer duly authorized to act on behalf of VDOT
Authorized Participant Representative	Person or officer duly authorized to act on behalf of the Participant
ETC	Electronic Toll Collection
ETC Services	All of those services necessary for the operation of an electronic toll collection system
ETC Services Agreement	The Agreement between VDOT and the Participant for the provision of electronic toll collection services

E-ZPass	Trademark for regional ETC system operated by an Interagency Group (IAG) of participants
E-ZPass Reciprocity Agreement	Agreement requiring reciprocity among Agencies participating in the E-ZPass ETC system
Fiscal Year	Any 12 month period beginning July 1st one year and ending June 30th the following year
Participant	(Name of participating agency)
CSC	Customer Service Center
VDOT	Virginia Department of Transportation

## **ARTICLE 2. ETC SERVICES**

### **Section 2.1 Provision of ETC Service**

By prior understanding of the parties, VDOT is responsible for certain services for both the Participant and VDOT with respect to the administration and operation of the ETC systems on (name of facility) and other E-ZPass facilities, including the customer services, distribution of transponders and the collection of tolls (collectively, “ETC Services) for the (name of facility) and other E-ZPass facilities through such transponders and the operation of E-ZPass Customer Service Centers (“CSC”) (as defined in Section 2.2).

All Participant policies and procedures that affect VDOT’s E-ZPass Customer Service Center Operations are subject to review and approval by VDOT. To the extent that any of Participant’s policies and procedures materially and adversely affects VDOT’s E-ZPass Customer Service Center Operations, VDOT and Participant shall engage in good faith discussions regarding the implementation of such policies and procedures, including the cure by Participant of any adverse financial affect on VDOT or the E-ZPass Customer Service Center Operations.

By its execution hereof, VDOT shall be deemed to have approved Participant’s existing policies and procedures.

### **Section 2.2 E-ZPass Customer Service Centers**

VDOT shall be responsible for the establishment, administration, and operation of one or more walk-in centers that will issue and provide services relating to the ETC system administration, prepaid account maintenance, and distribution of transponders (“Service Centers”) to be used for the ETC systems for the Participant and VDOT facilities. VDOT may contract with a private company (“ETC Servicer”) for the provision of such services (“ETC Services”) through an ETC Services Agreement. Unless otherwise provided herein, VDOT shall provide the necessary data and communication lines, office supplies and equipment to support the Service Center(s). VDOT will provide a minimum of seven (7) days advance notice to the Participant of any planned changes to any CSC location, toll operations and service requirements that materially affect Participant and will, with good faith cooperation, seek the Participant’s comments on any such changes and incorporate any mutually agreeable proposals.

### **Section 2.3 ETC Prepaid Account**

Notwithstanding anything contained in the agreement, VDOT and the Participant acknowledge that:

- (a) VDOT has established, in its name, an ETC Prepaid Account (“Account”) for purposes of collecting prepaid tolls, membership fees and transponder fees;
- (b) VDOT shall be the sole owner of the Account and shall have the exclusive right, power and authority, in the exclusion of the Participant and all other persons, to exercise sole dominion and control of the Account;
- (c) The Participant shall have no right, title or interest in and to the Account.

VDOT agrees, except in cases of system failure, to initiate payment by wire transfer to the Participant on or before the close of business of the next succeeding VDOT business day, an amount equal to the aggregate tolls and any applicable membership fees posted to patron accounts, less payment of the transaction fee provided as applicable. In the event outstanding bond covenants prohibit netting of the transaction fee from the electronic toll receipts, the transaction fee must be paid upon receipt of an Invoice for Services.

### **Section 2.4 Section 2.4 – Invoices for Services**

Any fees for any services including, but not limited to, ETC Services provided by VDOT to the Participant upon request or with the agreement of the other party that are not otherwise paid as provided herein, shall be invoiced to the other party and paid in compliance with the laws of the Commonwealth of Virginia.

### **Section 2.5 Section 2.5 – Disputed Invoices**

If either VDOT or the Participant disputes any invoice or payment transaction reported by the ETC Servicer, they shall give prompt notice to the ETC Servicer and each other. Participant shall only reimburse questioned amounts to VDOT upon satisfactory resolution, for any amounts in dispute.

### **Section 2.6 Section 2.6 – Payments by the ETC Servicer**

In the event that pursuant to the ETC Services Agreement, the ETC Servicer is obligated to pay VDOT lost revenues or any other sum resulting from the default in or the non-performance of its duties and obligations under the ETC Services Agreement, VDOT shall promptly remit to the Participant its pro rata portion of such sums. Such payment shall be based on the product of (i) the historical ratio of (name of facility) Transactions to VDOT Transactions over the applicable time period in question for the immediately preceding year (taking into account holiday and weekend travel days), multiplied by (ii) the average percentage traffic increase at the (name of facility) during the immediately preceding twelve month period; provided that if by reason of catastrophic event, the foregoing calculation is not a fair approximation of the traffic flow for the (name of facility) for the period in question, then VDOT shall remit such other amount as

Participant can establish to VDOT's reasonable satisfaction. Payment to the Participant by VDOT shall be limited to revenues lost by Participant or other sums that Participant can show as a direct loss from any such non-performance.

### **ARTICLE 3. ETC SYSTEMS**

#### **Section 3.1 Independent Systems**

The Participant operates an ETC system which is independent of but compatible with the VDOT system and uses the same type of transponder.

The Participant shall be responsible for ensuring that its ETC system provides ETC transaction data in the format required by the CSC. VDOT shall provide data formats, documentation, interface requirements and any other necessary design information to the Participant in a timely manner and at no additional cost to the Participant. Transaction processing problems which arise from the Participant not meeting these requirements shall be resolved at the direction of VDOT on a time plus materials basis. This information is subject to change with reasonable notice from VDOT. Participant will be required to conform to the new interface requirements at no cost to VDOT or Participant may elect to not install new interface requirements and withdraw from the ETC Agreement.

VDOT and the Participant shall each continue to be responsible for the maintenance, repair, and operation of all necessary lane and computer equipment for their respective ETC systems. Specifically, the Participant shall be responsible for the maintenance, repair and operation of all necessary lane and computer equipment for its ETC system through and including its host computer. In no event shall VDOT have any liability to the Participant for any losses suffered due to equipment failure or error in the Participant's ETC system from the lane level through the Participant's host computer. VDOT shall be responsible for the maintenance, repair and operation of its ETC system commencing from the Participant's host router and extending through and including telephone lines, routers, black boxes and the CSC. Should VDOT's failure to properly maintain, repair and operate its ETC system and the CSC cause a loss of revenue to the Participant, VDOT shall reimburse the Participant therefor and for Participant's direct costs associated therewith within 14 days after the Participant shall have given VDOT written notice. Such written notice shall include adequate and detailed documentation of such lost revenues and costs. Neither party shall have any liability to the other party for consequential damages.

#### **Section 3.2 Testing Procedures and Results**

VDOT shall be provided the opportunity to participate in the installation of upgrades or other modifications to the Participant's ETC system, as requested. The Participant may participate in the installation of upgrades or other modifications to VDOT's CSC system.

In such event, each party will provide proposed test schedules and scripts for such upgrades or other modifications to the other party and the CSC at least 60 days in advance of testing. In the case of upgrades or modifications to Participant's ETC system, upon mutual agreement VDOT may require additional tests to be undertaken at the Participant's expense in order to confirm the accuracy and reliability in all aspects of processing relating to ETC transactions. Copies of

test results shall be made available to the other party and the CSC promptly. VDOT will participate in acceptance testing and must approve testing prior to processing of live ETC traffic through the CSC.

### **Section 3.3 Modifications to Systems**

As equipment changes, modifications or upgrades occur to the ETC systems, the Participant shall use reasonable efforts to cause its ETC equipment used on its toll facility to be compatible with that used by VDOT on its other ETC facilities. The Participant will be responsible for any and all system maintenance, changes, modifications or upgrades to its ETC equipment or operations. Any changes, modifications or upgrades to any of the Participant's ETC equipment or other system modifications that may impact VDOT's ETC operations in any material respect shall be compatible with the VDOT ETC operations. Either party shall notify the other in writing at least 90 days in advance of any changes or modification to such party's ETC system equipment that may affect the other's ETC system equipment or operations in any material respect.

VDOT will exercise due care and diligence in planning and implementing modifications, upgrades and associated testing of its ETC system at levels which are reasonable given the schedule, scope and budget for the ETC system and will not exceed what is considered customary and reasonable for hardware and software processing systems. However, there is no guarantee against adverse impacts to the performance of the hardware or software in Participant's or others' systems. While precautions will be taken by VDOT to help mitigate the risk of occurrence of such adverse impacts, VDOT shall not, unless it is in breach of its duty of due care and diligence, be financially responsible for the occurrence of adverse impact to the Participant or other third parties affected during such modifications, upgrades and associated testing.

### **Section 3.4 System Performance**

Both the Participant and VDOT shall report within 48 business hours any system failure or degradation that may affect ETC operations. In the event that the Participant is unable to send E-ZPass transactions for periods in excess of 24 hours, the Participant must notify the Manager of the CSC prior to sending any backlogged E-ZPass transactions. If the CSC is unable to process E-ZPass or E-ZPass transactions for the Participant for any period in excess of 24 hours, VDOT shall notify the Participant within 48 business hours of such fact.

Any E-ZPass transactions not sent within 60 business days of occurrence are subject to deletion from the patron's account and related revenue may not be recorded or transferred unless the delay is due to failure by VDOT, in which case the related revenue shall promptly be transferred to the Participant.

### **Section 3.5 Disputed Transactions**

Each business day, the Participant will forward by telecopy or e-mail to VDOT via the CSC a report listing E-ZPass transactions by lane number from the previous day or weekend, as applicable. Each business day VDOT will cause the CSC, via telecopy or e-mail, to send the Participant a disbursement report reflecting E-ZPass and E-ZPass transaction revenue credited to Participant by lane number.

At any time the Participant E-ZPass and E-ZPass revenue reflected in the disbursement report is out of balance with Participant's reported E-ZPass and E-ZPass transactions by \$50 or more for any 3 consecutive days, the Participant will notify the CSC. CSC will provide a detailed disbursement file within 5 business days of Participant's notification. The Participant will compare the detailed disbursement report to its detailed audit and provide details regarding the disputed transactions sufficient to update the patron accounts. If the Participant cannot provide detail sufficient to update the patron accounts within 20 business days of the occurrence of the transactions, those transactions will not be charged to patron accounts and will not result in revenue to the facility. The Participant will send the detailed data to the CSC with comparisons of transactions to include the transaction sequence number(s) and the acknowledgement verification by the ETC system.

E-ZPass transaction/revenue disputes will be resolved on a monthly basis. The CSC will resolve disputes that are recognized and/or identified as valid by adjusting or offsetting the funds that are owed to the Participant in a subsequent transfer. Any Participant's E-ZPass transactions rejected by their respective home agency will be identified in a report, which will be communicated to the Participant. Rejected transactions will be handled according to documented or generally accepted E-ZPass reconciliation procedures.

#### **ARTICLE 4. PAYMENT TERMS**

##### **Section 4.1 Transaction Fee**

- (a) Participant will be responsible for paying a transaction fee ("transaction fee") based upon the number of electronic toll transactions processed and the revenue processed for that Participant. The transaction fee is intended to cover Participant's share of VDOT's total annual ETC expenses and shall be full compensation for VDOT to cover the normal and customary expenses requested to process tolls electronically and service the Participant's ETC accounts, based on transactions transmitted electronically to the CSC. The ETC Servicer will manage all responsibilities associated with collection and transmission of revenue back to the Participant.
- (b) It is mutually agreed that the transaction fee will cover all of VDOT's cost of operation, including providing and servicing transponders, operation of the CSC, capital, and any other costs associated with the collection of tolls for the Participant (Total ETC Costs). However, subject to bond covenants and the affirmative agreement of Participant to right of offset, VDOT reserves the right to offset against amounts to be transferred from the Account hereunder to the Participant, any amount due to VDOT from the Participant. VDOT agrees, and the Participant acknowledges, that the agreement to transfer Participant's tolls to the Account is irrevocable unless amended, modified or waived by written agreement of both parties.

- (c) Furthermore, any special services provided by the ETC Servicer for a Participant that have been agreed by VDOT and the Participant in advance shall be over and above the processing fee.

#### **Section 4.2 Basis for Transaction Fee**

- (a) The transaction fee shall consist of the sum of the following two amounts as determined by VDOT (and shall be deemed correct absent manifest error):
  - (i) An amount equal to: (1) the sum of the cost incurred by VDOT for the operation of the statewide ETC system, its amortized capital costs allocated to the statewide ETC system, and the annual E-ZPass membership dues paid by VDOT, for the then most recent twelve month period preceding the date of calculation of such costs less the sum of the credit card processing fees associated with transaction revenue, miscellaneous customer charges (e.g. statement fees, replacement transponder fees) and the away agency E-ZPass transaction fees for the same most recent twelve month period; divided by (2) the total number of ETC transactions in the immediately preceding calendar year; and
  - (ii) An amount equal to the average credit card processing fee multiplied by total revenue processed for the Participant. For the purposes of this calculation, the “average credit card fee” shall equal the actual credit card fees divided by credit card revenue multiplied by the percentage of total E-ZPass revenue processed by credit card.

In the event that the transaction fees collected for the twelve month period immediately preceding the date of calculation are either less than or in excess of the actual costs for such period, the deficiency or excess will then be applied to adjust the operating costs incurred by VDOT for the preceding twelve month period prior to the new calculation.

The total prior calendar year’s ETC transactions shall be based on the total number of ETC transactions recorded on all participating facilities. Annually, but not later than April 1st, VDOT shall provide to Participant written notice of the transaction fee to be charged in the next fiscal year.

#### **ARTICLE 5. TERM**

The term of this Agreement shall commence upon the date of this Agreement (the “Commencement Date”), and shall terminate on that date which is the earlier to occur of

- (a) the date on which the ETC Servicer is no longer providing services pursuant to the ETC Services Agreement, or in connection with the renegotiation of the current ETC Services Agreement, unless extended by mutual agreement of the parties in connection with the engagement of a

substitute ETC Servicer, or the renegotiation of the current ETC Services Agreement.

- (b) the date on which this Agreement is terminated by either party, or
- (c) June 30, 2008, subject to renewal beyond that term by successive one year extensions of the term unless and until terminated by written notice received by the other party at least 90 days prior to the end of the term or extended period at issue.

In order to insure continuity of ETC Services to the Participant, VDOT agrees that if the ETC Services Agreement shall for any reason be terminated, or is materially changed or renegotiated, VDOT shall make a good faith attempt (i) in the case where the ETC Services Agreement is materially changed or renegotiated or a substitute ETC Servicer is engaged by VDOT, to give the Participant the opportunity to obtain ETC Services from the current ETC Servicer or such substitute Servicer, as appropriate, under terms substantially the same as those set forth in the ETC Services Agreement and this Agreement pursuant to an amendment to this Agreement or a separate agreement, or (ii) in the case where VDOT is performing ETC Services for itself, to make ETC Services available to the Participant under terms substantially the same as those set forth in the ETC Services Agreement and this Agreement.

## **ARTICLE 6. OPERATIONS**

### **Section 6.1 Standard Operational Procedures**

VDOT shall ensure the establishment and maintenance of standard operating procedures for ETC Services. Once such initial standard operating procedures have been established they shall be attached hereto as Appendix B. The Participant agrees to comply with all such procedures should they decide to maintain a CSC independently of VDOT.

### **Section 6.2 Changes in Operational Procedures**

Any anticipated changes that materially affect operating procedures shall be presented and discussed at liaison meetings. VDOT will, in good faith cooperation, try to accommodate changes proposed by the Participant. However, VDOT has sole approval authority to amend operational procedures.

## **ARTICLE 7. RESPONSIBILITIES OF VDOT**

### **Section 7.1 Generally**

VDOT shall use commercially reasonable efforts to cause the ETC Servicer to perform its duties and obligations in accordance with the approved operating procedures. If the Participant gives VDOT a written notice stating that the ETC Servicer is not performing its duties and obligations, and specifying the reasons, VDOT shall promptly give the ETC Servicer notice to such effect and request appropriate action. VDOT shall include the Participant in all decisions relating to any such situation. The parties acknowledge that it is not necessary for Participant to be a party

to the ETC Services Agreement, provided that VDOT shall be obligated to provide all ETC Services hereunder.

### **Section 7.2 Notices**

VDOT shall promptly notify the Participant of all changes in ETC Services that are anticipated to materially affect Participant's operations, including with respect to E-ZPass and the E-ZPass Reciprocity Agreement.

## **ARTICLE 8. RESPONSIBILITIES OF PARTICIPANT**

### **Section 8.1 Generally**

The Participant shall use commercially reasonable efforts to maintain their ETC system to perform in accordance with the approved operating procedures. If VDOT gives the Participant a written notice stating that their ETC system is not operating in accordance with approved operating procedures, and specifying the reasons, the Participant shall promptly initiate appropriate corrective action. The Participant shall include VDOT in all decisions relating to any such situation. The Participant will take no actions that violate or affect any of the terms of the E-ZPass Reciprocity Agreement that is attached and incorporated as part of this agreement.

### **Section 8.2 Toll Rate Changes**

The Participant is exclusively authorized to make and be responsible for any toll rate changes at Participant's toll facilities in accordance with applicable law. Participant's toll rate changes shall be communicated to VDOT and the ETC Servicer at least fifteen (15) business days prior to implementation to allow for modifications to the ETC systems and related changes and modifications.

### **Section 8.3 Notices**

The Participant shall notify VDOT of all changes in their ETC systems that are anticipated to materially affect VDOT and/or ETC operations.

## **ARTICLE 9. MARKETING**

VDOT and the Participant shall coordinate marketing for the ETC system of toll collections. VDOT and the Participant shall mutually determine a marketing plan. VDOT will, in good faith cooperation, include the Participant in its marketing efforts. However, either party may implement, at its own cost, supplemental marketing efforts for its own roadway which are in addition to those provided by the mutually agreed upon marketing plan. The Participant shall be provided usage of, and is hereby granted a license to use, the "E-ZPass" and "E-ZPass" logos at no charge for operational and marketing purposes and VDOT represents and covenants that it has lawful authority to grant such license; provided that VDOT shall retain the right of prior approval of any such use, such approval not to be unreasonably withheld, conditioned or delayed.

## **ARTICLE 10. VIRGINIA TOLL FACILITIES GROUP; LIAISON; MEETINGS**

Each of VDOT and the Participant shall designate a person and the Participant will also designate an alternate whose responsibility shall be to meet periodically in order to coordinate areas of mutual concern and interest to the ETC systems for both the Participant and VDOT, including the Service Centers. Together with others appointed by agencies or bodies for which VDOT is providing ETC Services (such others are “Other Participants”), this group shall comprise the “Virginia Toll Facilities Group” (the “VTFG”).

The primary purpose of VTFG meetings shall be to discuss issues related to ETC Services maintenance, improvement, coordination and other issues of mutual interest to the VTFG, including VDOT’s ETC budget (for purposes of calculating the Transaction Fee) and the selection and performance of the ETC Servicer. VDOT shall be responsible for coordinating the meetings, which shall be held not less often than quarterly.

The VTFG shall have the responsibility for advising VDOT and the various Participants with respect to ETC systems and performance in Virginia, shall oversee the implementation and performance of ETC systems but shall be an advisory body that may not bind or commit any of VDOT or the various Participants except by duly authorized express delegation for such purpose.

## **ARTICLE 11. DISPUTE RESOLUTION**

Any dispute that may arise between VDOT and the Participant shall be mutually resolved through the best efforts and good faith negotiations between the Authorized VDOT Representative and Authorized Participant Representative. In conducting such negotiations, VDOT and the Participant recognize that in drafting this Agreement, it is impracticable to make provisions for every contingency that may arise during its term. Accordingly, in order to achieve the resolution of any dispute concerning matters for which the Agreement provides no clear guidance, VDOT and the Participant concur that this Agreement imposes a duty to negotiate in good faith.

## **ARTICLE 12. DEFAULT**

### **Section 12.1 Default Generally**

Failure by either VDOT or Participant to fulfill their respective responsibilities set forth herein shall give rise to an event of default under the terms of this Agreement. Following upon appropriate notice of default, and failure to cure within the agreed upon period, the Agreement may be terminated in accordance with Section 12.2 or Section 12.3.

### **Section 12.2 Termination by Participant**

Both Parties shall determine a mutually agreeable cure period. If the Parties cannot reach agreement on what constitutes a reasonable cure period then VDOT shall make the determination, taking into account the corrective measures to be instituted promptly and pursued diligently by the defaulting Party, except for payments from the Account under Section

2.3 as to which Participant may allow a VDOT cure period in exceptional cases. . Following expiration of the cure period, unless extended by mutual agreement, the Participant shall have the right to terminate this Agreement upon the occurrence of any of the following events:

- (a) A default by VDOT to perform its duties or obligations hereunder or to cause the ETC Servicer to perform its duties or obligations under the ETC Services Agreement; or
- (b) If the Participant determines that the transaction fee meets or exceeds a level that adversely affects the Participant's operating budget.

### **Section 12.3 Termination by VDOT**

Both Parties shall determine a mutually agreeable cure period. If Parties cannot reach agreement on what constitutes a reasonable cure period then VDOT shall make the determination, taking into account the corrective measures to be instituted promptly and pursued diligently by the defaulting Party; provided that no cure period shall be less than 60 days. Following expiration of the cure period provided, unless extended by mutual agreement, VDOT shall have the right to terminate this Agreement upon the occurrence of a default by the Participant in the performance of its duties or obligations under this Agreement, including Responsibilities outlined in Article 8.

## **ARTICLE 13. MISCELLANEOUS**

### **Section 13.1 Waivers, Modifications and Amendments**

No waiver, modification, or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing and signed by both VDOT and the Participant. The effect of any such change shall be limited to the extent specified and agreed-to by VDOT and the Participant, as evidenced by signatures of duly appointed officers of each of the parties.

### **Section 13.2 Captions**

Captions, headings, cover pages and tables of contents contained in this agreement are inserted for convenience of reference only and in no way define, limit or prescribe the scope, intent or meaning of any provisions of this Agreement. All appendices, exhibits, or schedules attached hereto are hereby incorporated herein and made a part of this Agreement.

### **Section 13.3 Notices**

All notices shall be in writing and shall be delivered personally, by telecopy, or by registered or certified mail, return receipt requested, addressed as follows:

**Participant Mailing Address**

**VDOT Mailing Address**

Attention:  
Telecopier:

Commonwealth Transportation Commission  
Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219  
Attention: Commission  
Telecopier: 804-780-6250

**Section 13.4 Entire Agreement**

This Agreement constitutes the entire agreement between VDOT and the Participant concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements about them, either oral or written.

**Section 13.5 Force Majeure/Emergency**

In case by reason of force majeure, either party shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then, provided such party shall give notice and full particulars of such force majeure in writing to the other within a reasonable time after occurrence of the event or cause relied on, the obligations of such party so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. Any time period specified herein for the performance by such party of an obligation shall be appropriately adjusted and extended without the necessity for any amendment to this Agreement if a force majeure event occurs.

**IN WITNESS THEREOF**, this Agreement has been entered into as of the first date set forth above, by the duly authorized officers of the parties hereto.

**PARTICIPANT**

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT E**

**DEPARTMENT'S REIMBURSABLE COSTS AND PERMIT FEES**

**[Amounts to be furnished by the Department 45 days prior to the Proposal Due Date]**

**Part A Department's Initial Reimbursable Cost**

1. Concurrently with the Agreement Date, the Concessionaire shall pay to the Department, in good and immediately available funds, \$\_\_\_\_\_ (the "Department's Initial Reimbursable Cost"). Failure to pay when due shall constitute a material the Concessionaire Default.
2. The foregoing Department's Initial Reimbursable Cost consists of two components, as follows:
  - 2.1 \$\_\_\_\_\_, as reimbursement in full for the Department's costs of procuring this Agreement; and
  - 2.2 An additional \$\_\_\_\_\_, equal to the balance, as compensation in full for the cost of Department's Oversight Services from and including the Agreement Date through December 31, 2009. This payment does not include compensation otherwise due to the Department under the Agreement, including the following: (a) any increase in the Department's Allocable Costs of Oversight Services arising out of a Concessionaire Default, (b) any increase in the Department's Allocable Costs of Oversight Services arising out of an election to increase monitoring pursuant to Section 10.03 or Section 11.06(a) of the Agreement, (c) the Department's Allocable Costs of Oversight Services relating to or arising out of Safety Compliance Orders, Concessionaire Project Enhancements or Change Orders requested by the Concessionaire, (d) any activities of the Department which are not Oversight Services and for which it is entitled to reimbursement of Allocable Costs under the Agreement, pursuant to Sections 8.05(g) and 8.07(d), and (e) the Department's reimbursable costs for the services of the Independent Engineer under the Independent Engineer Agreement.

**Part B Department's Annual Reimbursable Cost**

1. Commencing on January 1 immediately following the Agreement Date, and on each January 1 thereafter occurring during the Term, the Concessionaire shall pay, in advance, to the Department a Department's Annual Reimbursable Cost in the amount determined as set forth in Section 2 and Section 3 below. Failure to pay when due shall constitute a material the Concessionaire Default.
2. The first Department's Annual Reimbursable Cost shall equal \$\_\_\_\_\_. The Department's Annual Reimbursable Cost corresponding to each calendar year thereafter shall equal the immediately preceding calendar year's Department's Annual Reimbursable Cost (assuming a full immediately preceding calendar year) increased by the increase, if any, in the CPI, since the most recently published CPI prior to December 1 immediately preceding the calendar year for which the Department's Annual Reimbursable Cost is being determined.

3. The Department's Annual Reimbursable Cost shall be recalibrated as of the Service Commencement Date to equal \$\_\_\_\_\_. The Department's Annual Reimbursable Cost corresponding to each calendar year shall equal such recalibrated Department's Annual Reimbursable Cost increased by the increase, if any, in the CPI since the CPI most recently published prior to December 1<sup>st</sup> immediately preceding the calendar year for which the Department's Annual Reimbursable Cost is being determined. If the Service Commencement Date does not fall on January 1, then the then-existing Department's Annual Reimbursable Cost shall be prorated across the full calendar year, based on a 360 day year, and the recalibration shall apply only to the balance of the calendar year occurring from and after the Service Commencement Date. The excess portion of the then-existing Department's Annual Reimbursable Cost resulting from such recalibration shall be credited to the next Department's Annual Reimbursable Cost due.

4. The Department's Annual Reimbursable Cost for any partial year at the end of the Term shall be prorated based on a 360-day year. The Department shall refund any excess payment previously received resulting from such proration concurrently with the expiration of the Term, or at the same time the Department owes compensation due to a termination under Article 21, subject to the Department's rights of offset and deduction under the Agreement.

5. Each Department's Annual Reimbursable Cost constitutes compensation in full for the cost of Department's Oversight Services for the applicable calendar year, excluding (a) any increase in the Department's Allocable Costs of Oversight Services arising out of the Concessionaire's breach or failure to perform or a Concessionaire Default, (b) any increase in the Department's Allocable Costs of Oversight Services arising out of an election to increase monitoring pursuant to Section 10.03 or Section 11.06(a) of the Agreement, (c) the Department's Allocable Costs of Oversight Services relating to or arising out of the Concessionaire's requests for review and approval of Deviations or of a schedule recovery plan pursuant to Section 8.14 of the Agreement, or relating to or arising out of Nonconforming Work, Safety Compliance Orders, Concessionaire Project Enhancements, Major Maintenance or Change Orders requested by the Concessionaire, (d) any activities of the Department which are not Oversight Services and for which it is entitled to reimbursement of Allocable Costs under the Agreement pursuant to Sections 8.05(g), 8.07(d) and 9.04(e), and (e) the Department's reimbursable costs for the services of the Independent Engineer under the Independent Engineer Agreement.

### **Part C Permit Fee**

1. In the event the Concessionaire achieves the Maximum PVR prior to the end of the Term as determined in accordance with Section 4.02 of the Agreement, then from and after the month in which the Concessionaire achieves the Maximum PVR until the end of the Term, the Concessionaire shall owe to the Department, as a Permit Fee, 75% of an amount equal to the difference of the Monthly Gross Revenue received during such period minus any other Permit Fees due to the Department.

2. Such Permit Fee shall be due and payable to the Department monthly, within 15 days after the end of each month. With each payment the Concessionaire shall deliver to the Department a true and complete report of the total gross Toll Revenues collected and the total Toll Revenues refunded or credited to customers in the month for which payment is made, broken down on a daily basis.

3. The Concessionaire's obligation to pay such Permit Fee shall survive the expiration or earlier termination of the Agreement.

**EXHIBIT F**

**FINANCIAL PLAN MEMORANDUM**

[TO BE PROVIDED BY CONCESSIONAIRE]

**EXHIBIT G**

**FORM OF PERFORMANCE SECURITY**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

**ISSUER:**

**PLACE FOR PRESENTATION OF DRAFT:** [Name and Address of Bank/Branch]

**APPLICANT:** [Concessionaire]

**BENEFICIARY:** COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TRANSPORTATION  
1401 E. Broad Street  
Richmond, VA 23219

**LETTER OF CREDIT NUMBER:**

**PLACE AND DATE OF ISSUE:**

**STATED AMOUNT: US\$125,000,000**

**EXPIRATION DATE:**

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of the Virginia Department of Transportation, for any sum or sums up to the aggregate amount of Two Hundred Twenty Five Million United States Dollars (US\$125,000,000), available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. State one of the following:

“This drawing is due to \_\_\_\_\_(Concessionaire’s name)\_\_\_\_\_ breach or failure to perform certain obligations under the Comprehensive Agreement Relating to the U.S. Route 460 Corridor Improvements Project Agreement (“Agreement”), between \_\_\_\_\_(Concessionaire’s name)\_\_\_\_\_ and the Virginia Department of Transportation.”

or

“This drawing is being made because the Issuer of the Letter of Credit upon which draft is made has failed to maintain the credit rating or organization requirements set forth in Section 8.13(e)(i)(B) of the Agreement and the time period for providing a substitute

letter of credit as set forth in that section has expired without a substitute letter of credit acceptable to the Department having been provided.”

or

“This drawing is being made because we have been notified that the Letter of Credit will not be extended beyond the current expiration date and a satisfactory replacement has not been provided as of 45 days prior to the current expiration date as required under Section 8.13(e)(iii) of the Agreement.”

All drafts will be honored if presented to \_\_\_\_\_ (Bank or branch – name & address) \_\_\_\_\_ on or before \_\_\_\_\_ (Expiration Date) \_\_\_\_\_ or any extended expiration date.

Drawings by facsimile to facsimile number ( ) \_\_\_\_\_ and by e-mail to e-mail address \_\_\_\_\_ are acceptable (each such drawing, a "Remote Drawing") provided, however, that a Remote Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Remote Drawing by calling Issuer at telephone number ( ) \_\_\_\_\_. Issuer will acknowledge Beneficiary's presentment by e-mail to the e-mail address provided to Issuer in the Remote Drawing.

This Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. If a conflict between ISP98 and Virginia law should arise, Virginia law shall prevail.

Issuer:

By: \_\_\_\_\_ (Authorized signature of Issuer) \_\_\_\_\_

**EXHIBIT H**

**PERFORMANCE POINTS TABLE**

**Introduction**

The tables below set forth certain Concessionaire breaches or failures to perform its obligations under the terms of the Comprehensive Agreement that may result in the assessment by the Department of Performance Points pursuant to Article 11. The tables include the specific breaches or failures to perform, the category of each breach or failure to perform, the cure period (if applicable), and the maximum number of Performance Points that may be assessed by the Department for each such breach or failure to perform.

<b>Table 1 Performance Points during the Work Period</b>						
<b>Heading</b>	<b>Ref</b>	<b>§ Ref</b>	<b>Breaches or Failures to Perform</b>	<b>Cate- gory</b>	<b>Cure Period</b>	<b>Max Points</b>
W1 Notification of breach or failure	W1.1	NA	The Concessionaire fails to notify the Department of the occurrence of any breach or failure to perform specified in this Exhibit.	C	None	2
W2 Financial	W2.1	Agreement § 4.03	The Concessionaire fails to prepare a PVR calculation in accordance with the requirements within the timeframes required by the Agreement.	B	14 Days	1
	W2.2	Agreement § 6.02(b)	The Concessionaire fails to deliver to the Department (following an update to the Base Case Financial Model) an update of the Financial Model within the timeframes required by the Agreement.	B	14 Days	1
W3 Govern- mental Approvals	W3.1	Agreement § 8.07	The Concessionaire fails to obtain, maintain, or otherwise comply with a Governmental Approval or other third-party approval or agreement.	B	7 Days	4
W4 Access and Records	W4.1	Agreement § 10.03	The Concessionaire fails to provide unrestricted access at all times to the Department to enter upon, inspect, sample, measure and physically test any part of the Project or the Project Right of Way.	B	1 Day	1
	W4.2	Agreement § 10.03	The Concessionaire fails to provide the Department, upon reasonable advance written notice to the Concessionaire, access to inspect financial or other records relating to the Project.	A	14 Days	2

**Table 1 Performance Points during the Work Period**

<b>Heading</b>	<b>Ref</b>	<b>§ Ref</b>	<b>Breaches or Failures to Perform</b>	<b>Category</b>	<b>Cure Period</b>	<b>Max Points</b>
	W4.3	Technical Requirements § 1.2.9	The Concessionaire fails to maintain an Electronic Document Management System meeting the Technical Requirements.	A	30 Days	2
W5 Contracting and Labor Practices	W5.1	Agreement § 25.02(h)	The Concessionaire enters into, permits or suffers a Contract or amendment thereto with an Affiliate (an "Affiliate Contract") without notice to and consent of the Department.	C	None	4
	W5.2	Agreement § 25.03(d)	The Concessionaire fails to submit quarterly reports of good faith efforts' documentation with respect to DBE/SWaM commitments on form C-63 to the Department.	B	14 Days	1
W6 Submittals of Design Documentation and Construction Documentation	W6.1	Agreement § 8.05(a)	The Concessionaire fails to provide the Department with a schedule of its proposed submittals of Design Documentation and Construction Documentation by the specified date.	B	7 Days	1
	W6.2	Agreement § 8.05(a)	The Concessionaire fails to submit to the Department all Design Documentation and Construction Documentation relating to the Work in accordance with the approved submittal schedule.	B	7 Days	1
	W6.3	Agreement § 8.05(b)	The Concessionaire fails to submit to the Department the interim design submissions in accordance with the approved schedule.	B	7 Days	1
	W6.4	Agreement § 8.05(c)	The Concessionaire fails to provide evidence of quality assurance reviews of any Design Documentation and Construction Documentation before its submission to the Department.	C	None	4
	W6.5	Agreement § 8.05(c)	The Concessionaire fails to make modifications to the Design Documentation and Construction Documentation necessary to fully reflect and resolve Department comments and objections, thus necessitating additional review and comment by the Department.	C	None	2
W7 Reporting	W7.1	Technical Requirements § 1.10.2	The Concessionaire fails to submit a weekly report within two days following the end of the reporting period.	B	2 Days	1

**Table 1 Performance Points during the Work Period**

<b>Heading</b>	<b>Ref</b>	<b>§ Ref</b>	<b>Breaches or Failures to Perform</b>	<b>Category</b>	<b>Cure Period</b>	<b>Max Points</b>
	W7.2	Technical Requirements § 1.10.3	The Concessionaire fails to submit a monthly report within seven days following the end of the reporting period.	B	7 Days	2
W9 Specified persons	W9.1	Technical Requirements § 3.2.7(e)	The Concessionaire fails to maintain a certified Erosion and Sediment Control employee within the Project Right of Way pursuant to the terms of the Technical Requirements.	B	7 Days	1
W10 Quality Management	W 10.1	Agreement § 10.01(d)	The Concessionaire fails to comply with the requirements of the Quality Management System Plan (including Contractors and suppliers at every level).	C	None	2
W11 Project Development Plans (PDPs)	W 11.1	Technical Requirements § 1.3	The Concessionaire fails to submit to the Department for approval a PDP meeting the specified requirements for Department approval by the specified milestone.	B	14 Days	1
	W 11.2	Technical Requirements § 1.3	The Concessionaire fails to comply with the requirements of a PDP when carrying out any Work	A	None	2
	W 11.3	Technical Requirements § 1.3.3	The Concessionaire fails to prepare a PDP update for the Department's approval when required to do so.	B	14 Days	3
	W 11.4	Technical Requirements § 3.2.5	The Concessionaire fails to immediately notify the Department of any non-compliant item(s) associated with Environmental Laws and Regulatory Approvals identified during the Work by the Concessionaire.	C	None	4
W12 Hazardous Substances	W 12.1	Agreement § 16.01(b)	The Concessionaire fails to notify the Department of Hazardous Substances within the Project Right of Way.	C	2 days	6
W13 Schedule	W 13.1	Technical Requirements § 1.4	The Concessionaire fails to submit to the Department, for its review and approval the Project Schedules and proposed updates to the Project Schedules as required or directed by the Department,.	B	14 Days	1

**Table 1 Performance Points during the Work Period**

<b>Heading</b>	<b>Ref</b>	<b>§ Ref</b>	<b>Breaches or Failures to Perform</b>	<b>Category</b>	<b>Cure Period</b>	<b>Max Points</b>
	W 13.2	Technical Requirements § 1.4	The Concessionaire makes significant alterations to the Baseline Schedule, without informing the Department or seeking approval from the Department, as applicable.	C	None	4
	W 13.3	Technical Requirements § 1.4	The Concessionaire fails to correct items of non-concurrence from the Department in Baseline Schedule updates.	A	14 Days	1
W14 Public Information	W 14.1	Agreement § 8.09	The Concessionaire fails to provide public information in accordance with the approved Public Information and Communications Plan.	B	2 days	4
	W 14.2	Technical Requirements § 2.4	The Concessionaire fails to comply with the requirements of the Public Information and Communications Plan	A	7 Days	1
W15 Right of Way	W 15.1	Technical Requirements § 1.6	The Concessionaire fails to submit a Right of Way Acquisition Plan that meets the standards set forth in, and by the timeframe required by, the Technical Requirements.	B	14 Days	3
	W 15.2	Technical Requirements § 1.6	The Concessionaire fails to adhere to the Right of Way Acquisition Plan in performing Right of Way acquisition services.	C	None	3
W16 Work Restrictions	W 16.1	Technical Requirements § 1.8	The Concessionaire conducts Work in contravention of any working hour restrictions set forth in the Technical Requirements.	C	None	3
W17 MOT	W 17.1	Technical Requirements § 1.9	The Concessionaire conducts MOT operations in violation of the standards and specifications set forth in the Technical Requirements.	D	None	3
W18 Construction Health and Safety Standards	W 18.1	Technical Requirements § 1.13	The Concessionaire is found to be in violation of the Virginia Occupational Health and Safety adopted under the Code of Virginia.	D	None	2

**Table 1 Performance Points during the Work Period**

Heading	Ref	§ Ref	Breaches or Failures to Perform	Cate- gory	Cure Period	Max Points
W19 Security	W 19.1	Technical Require- ments § 3.12	The Concessionaire fails to adhere to requirements regarding the protection and control of Critical Infrastructure Information and Sensitive Security Information, pursuant to the Technical Requirements.	B	21 Days	2

**Table 2 – The Operating Period**

<b>Table 2 Performance Points during the Operating Period</b>						
<b>Heading</b>	<b>Ref</b>	<b>§ Ref</b>	<b>Breaches or failures to conform</b>	<b>Cate- gory</b>	<b>Cure Period</b>	<b>Max Points</b>
O1 Notification of breach or failure		NA	The Concessionaire fails to notify the Department of the occurrence of any breach or failure specified in this Exhibit.	C	None	2
O2 Access and Records	O2.1	Agreement § 10.03	The Concessionaire fails to provide the Department, upon reasonable advance written notice to the Concessionaire, access to inspect financial or other records relating to the Project.	A	14 Days	2
	O2.2	Technical Require- ments § 5.3.2	The Concessionaire fails to create and maintain a computer based Maintenance Management System (MMS) meeting the specified requirements.	B	30 Days	1
	O2.3	Technical Require- ments § 5.3.2	The Concessionaire fails to record a Defect on the MMS within 3 days of the Defect coming to the attention of Concessionaire or fails to record of response to Defect within 3 days of corrective action being taken.	B	3 Days	1
	O2.4	Technical Require- ments § 5.3.2	The Concessionaire fails to provide the Department access to the MMS at all times for the purposes of auditing the accuracy of the Concessionaire's Operations and Maintenance Records.	B	7 Days	1
Contracting and Labor Practices	O3.1	Agreement § 25.03(d)	The Concessionaire fails to submit quarterly reports of good faith efforts' documentation with respect to DBE/SWaM commitments on form C-63 to the Department.	B	14 Days	1
	O3.2	Agreement § 9.03(a)	The Concessionaire fails to provide the Department with notice of any proposed change in O&M Contractor.	C	None	4
O4 Reporting	O4.1	Technical Require- ments § 1.10.4	The Concessionaire fails to submit a quarterly O&M report within 14 days following the end of the reporting period.	B	7 Days	2
	O4.2	Technical Require- ments § 1.10.5	The Concessionaire fails to submit an annual report during Operating Period within 30 days following the end of the reporting period.	B	30 Days	2

**Table 2 Performance Points during the Operating Period**

Heading	Ref	§ Ref	Breaches or failures to conform	Cate- gory	Cure Period	Max Points
O5 Specified persons	O5.1	Technical Requirements § 5.2.1.2	The Concessionaire fails to perform inspections of road pavements and structures using personnel certified as inspectors in accordance with the Standards and Specifications set forth in Attachment 2.6a.	B	30 Days	1
O6 Project Development Plans (PDPs)	O6.1	Technical Requirements § 1.3	The Concessionaire fails to submit any component of the O&M Plan or any other PDP required during the Operating Period meeting the specified requirements for Department approval by the specified milestone.	B	14 Days	1
	O6.2	Agreement § 10.01(d)	The Concessionaire fails to comply with the requirements of a PDP when carrying out any O&M Work.	A	None	2
	O6.3	Technical Requirements § 1.3.3	The Concessionaire fails to prepare a PDP update for the Department's approval when required to do so.	B	14 Days	3
O9 Maintenance Performance	O 9.1a	Technical Requirements § 5.6.2	<p><b>Timeliness Mitigation and Repair of Type 1 Defect</b></p> <p>The Concessionaire fails to mitigate or repair a Type 1 Defect within the Timeliness Requirements set forth in Table 6.1b of Attachment 6.1.</p> <p>(Note Performance Points shall be assessed separately for each failure)</p>	D	None	5
	O 9.1b	Technical Requirements § 5.6.2	<p><b>Timeliness Mitigation and Repair of Type 2 Defect</b></p> <p>The Concessionaire fails to mitigate or repair a Type 2 Defect within the Timeliness Requirements set forth in Table 6.1b of Attachment 6.1.</p> <p>(Note Performance Points shall be assessed separately for each failure)</p>	B	7 Days	2

**Table 2 Performance Points during the Operating Period**

Heading	Ref	§ Ref	Breaches or failures to conform	Cate- gory	Cure Period	Max Points
	O9.2	Technical Requirements Section § 5.6.2	<p><b>Ordinary Maintenance Criteria</b></p> <p>The Concessionaire fails to meet one or more of the “Ordinary Maintenance Criteria” set forth in the fourth column of Table 6.6b of the Technical Requirements to the extent required in the third column of Table 6.6b (entitled “Target”) as a percentage of the total measurements performed with respect to each criterion.</p> <p>(Note Performance Points may be assessed separately for each Asset; source of data shall be as reported in the Concessionaire’s quarterly report or as identified by the Department)</p>	B	30 Days	2
	O9.3	Technical Requirements Section § 5.6.2	<p><b>Asset Condition</b></p> <p>The Concessionaire fails to make a satisfactory remedy or repair to an Asset, such that it fails to meet or exceed the “Asset Condition Criteria” set forth in the third column of Table 6.6a of the Technical Requirements to the extent required in the fourth column of Table 6.6a (entitled “Target”) as a percentage of the total measurements performed with respect to the criterion.</p> <p>(Note Performance Points may be assessed separately for each Asset)</p>	A	6 Months	5
	O9.5	Technical Requirements § 5.6.4.3	The Concessionaire fails to accurately report the Concessionaire’s performance in the quarterly maintenance report	B	14 Days	2
O10 Services Requirements	O 10.1	Technical Requirements Table 5.6b (Incident / Emergency Response)	The Concessionaire fails to achieve any of the Timeliness Requirements for Incident/Emergency Response averaged over the quarterly reporting period.	C	None	5
O11 Life Cycle Maintenance Plan	O 11.1	Agreement § 9.05(c)	The Concessionaire fails to prepare a Life Cycle Maintenance Plan and subsequent annual updates meeting the specified requirements at least 90 Days prior to the start of the Operating Period and each subsequent calendar year.	B	30 Days	5

**Table 2 Performance Points during the Operating Period**

<b>Heading</b>	<b>Ref</b>	<b>§ Ref</b>	<b>Breaches or failures to conform</b>	<b>Cate- gory</b>	<b>Cure Period</b>	<b>Max Points</b>
	O 11.2	Agreement § 9.05(c)	The Concessionaire fails to submit to the Department estimated costs for Tasks as part of its Life Cycle Maintenance Plan at least 90 Days prior to the start of each calendar year.	B	7 Days	1
O12 Operations	O 12.1	Technical Require- ments § 4.15	The Concessionaire fails to ensure that dynamic message signs present accurate tolling and travel information at all times	C	None	1
	O 12.3	Technical Require- ments § 1.9.1.2	The Concessionaire fails to meet requirements of I&IM 241, or update thereof, relative to work zone safety, management, Maintenance of Traffic and diversion routes for regular maintenance during operations.	D	None	2
O13 Financial	O 13.1	Agreement § 6.02(b)	The Concessionaire fails to deliver to the Department (following an update to the Base Case Financial Model) an update of the Financial Model within the timeframes required by the Agreement	B	14 Days	2
	O 13.2	Agreement § 7.07 (a)	The Concessionaire fails to provide the Department with written notice of any proposed Refinancing at least 30 Days prior to the proposed date of closing of the Refinancing along with supporting documents as stated in the agreement.	B	7 Days	2
O14 Tolling	O 14.1	Agreement § 5.01	The Concessionaire is found to be in violation of the Agreement in applicable Law regarding the application of toll rates to like vehicles.	D	None	5
Tolling	O 14.2	Agreement § 5.02(d)	The Concessionaire fails to notify the Department of toll rates charged to every category of user.	B	14 Days	2
Tolling	O 14.3	Technical Require- ments § 5.5.2.3	The Concessionaire transmits duplicate transactions or incorrect toll amounts to the Customer Service Center (to be determined on a per transmission basis).	C	None	5
Tolling	O 14.4	Agreement § 5.05	The Concessionaire fails to comply with its obligations to suspend the collection of tolls in accordance with the Agreement.	D	None	5

**Table 2 Performance Points during the Operating Period**

<b>Heading</b>	<b>Ref</b>	<b>§ Ref</b>	<b>Breaches or failures to conform</b>	<b>Cate- gory</b>	<b>Cure Period</b>	<b>Max Points</b>
Tolling	O 14.5	Technical Require- ments § 5.5.2.3	The Concessionaire fails to reconcile or audit the data transmission within 3 Business Days of notification of duplicate transactions or incorrect toll charges (determined on a per transmission basis).	A	1 Day	5
Tolling	O 14.6	Technical Require- ments § 5.5.2.3	Within seven days of receiving notice that an incorrect toll amount has been charged (and provided that customer information has been provided) and that the incorrect charge has been validated, the Concessionaire fails to provide the customer service center correspondence to be sent to the customer informing the customer that his or her account will be credited for errors in excess of \$0.25 (to be determined on a per transmission basis).	B	7 days	5
Tolling	O 14.7	Technical Require- ments § 5.5.2.3	Upon receiving notice that an incorrect toll has been charged, the Concessionaire fails to submit a plan to the Department for approval to rectify the billing problem.	B	7 days	5
Tolling	O 14.8	Agreement § 5.04	The Concessionaire fails to comply with standards applicable to the retention of and use of customer records pursuant to applicable Law, including § 33.1-56.4 of the Code of Virginia.	C	None	5

**EXHIBIT I**

**FEDERAL REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Federal Provisions	2
Attachment 2 – FHWA Form 1273	25
Attachment 3 – Wage Determination of the Secretary of Labor	4
Attachment 4 – Special Provision for Notice of Requirement for Affirmative Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	8
Attachment 5 – Debarment and Suspension Certification	1
Attachment 6 – Lobbying Certification	2
Attachment 7 – Compliance with Section 1604(b)(3) of SAFETEA-LU	2
Attachment 8 – Compliance with Buy America Requirements	2

**ATTACHMENT 1 TO EXHIBIT I**

**FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION FACILITIES**

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

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

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

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

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

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

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

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway

Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

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

### **CONVICT PRODUCED MATERIALS**

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

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

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

### **ACCESS TO RECORDS**

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

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

**ATTACHMENT 2 TO EXHIBIT I**

**REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**

**FHWA FORM 1273**

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## I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
  - Section I, paragraph 2;
  - Section IV, paragraphs 1, 2, 3, 4, and 7;
  - Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. Selection of Labor: During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

## II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
  - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
  - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its

implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
- c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

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

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

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

**6. Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

- 7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of

such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and

female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

- a. The records kept by the contractor shall document the following:
  - i. The number of minority and non-minority group members and women employed in each work classification on the project;
  - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
  - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
  - iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the

EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

#### **IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

##### **1. General:**

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a

weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

**2. Classification:**

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
  - i. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
  - ii. the additional classification is utilized in the area by the construction industry;
  - iii. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - iv. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized

representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

**3. Payment of Fringe Benefits:**

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

- a. Apprentices:
  - i. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or

with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

- ii. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
- iii. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- i. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
  - ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
  - iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
  - iv. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. **Helpers:** Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

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

**6. Withholding:**

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

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the

clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

**1. Compliance with Copeland Regulations (29 CFR 3)**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

**2. Payrolls and Payroll Records:**

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the

contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - i. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  - ii. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  - iii. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

- 1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
  - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
  - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
  - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
- 2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

- 1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the

contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

- a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
  3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
  4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### **VIII. SAFETY: ACCIDENT PREVENTION**

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

#### **NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

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

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

- *Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*
- *Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.”*

**X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

**1. Instructions for Certification - Primary Covered Transactions**

(Applicable to all Federal-aid contracts - 49 CFR 29)

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

- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A

participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--  
Primary Covered Transactions**

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

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
3. Instructions for Certification - Lower Tier Covered Transactions:  
  
(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)
  - a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
  - b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
  - c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
  - d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
  - e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
  - f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
  - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered

transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

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

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal

contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT 3 TO EXHIBIT I**

**FEDERAL PREVAILING WAGE RATE**

(Subject to change)

***Note: The Concessionaire shall comply with the applicable Federal Prevailing Wage Rate in effect at the time the Work is performed.***

GENERAL DECISION: VA20080009 05/16/2008 VA9

Date: May 16, 2008

General Decision Number: VA20080009 05/16/2008

Superseded General Decision Number: VA20070009

State: Virginia

Construction Type: Highway

Counties: Chesapeake\*, Isle of Wight, Norfolk\*, Portsmouth\*,

Suffolk\* and Virginia Beach\* Counties in Virginia.

\*INDEPENDENT CITIES

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

Modification Number	Publication Date
0	02/08/2008
1	03/07/2008
2	05/16/2008

\* ELEC0080-001 03/01/2008

	Rates	Fringes
Electricians (Including Traffic Signal Installers/Maintainers) .....	\$ 22.55	12.50%+5.00+a

- a. Workmen shall be allowed 2 hours with pay at the start or at the end of the work day on State and National Election Days; Tuesday following the first Monday in November, provided they are qualified and vote.

\* ENGI0147-013 05/01/2008

	Rates	Fringes
Power equipment operators:		
Crane, Derrick, Dragline Operators		
1 yd. & under.....	\$ 23.84	8.69%+6.60
Over 1 yd .....	\$ 24.76	8.69%+6.60
Pile Driver Leadsman .....	\$ 23.84	8.69%+6.60

SUVA1999-012 02/09/1999

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator.....	\$ 7.97	
BLASTER.....	\$ 9.00	
Carpenters Structure.....	\$ 12.66	
Concrete Finisher.....	\$ 10.53	
Deckhand.....	\$13.49	
FENCE ERECTOR .....	\$ 9.50	
Flagger .....	\$ 7.22	
Form Setter.....	\$ 9.75	
Guardrail erector .....	\$ 14.13	
Laborers:		
Asphalt Rakers.....	\$ 8.27	
Construction Workers I (Skilled Laborers) .....	\$ 8.80	
Construction Workers II (Laborers).....	\$ 7.68	
Landscape Workers .....	\$ 7.92	
Pipelayers .....	\$ 8.05	
Power Tool Operators .....	\$ 9.26	

MASON

Structure .....	\$ 9.00
Painter, Bridge .....	\$ 13.08
PAINTER .....	\$ 13.90
Power equipment operators:	
Air Compressor Operators.....	\$ 20.00
Asphalt Distributor Operators .....	\$ 9.14
Asphalt Paver Operators .....	\$ 9.74
Backhoe Operators .....	\$ 11.74
Bulldozer Operators, Utility.....	\$ 10.06
Bulldozer Operators .....	\$ 10.33
Concrete Finish Machine Operators, Utility .....	\$ 11.32
Concrete Finish Machine/Screeed Operators (Bridge) ....	\$ 14.00
Concrete Paving Machine Operators.....	\$ 9.16
Concrete Pump Operators.....	\$ 16.01
Concrete Saw Operators.....	\$ 16.01
Crusher Tender Operators .....	\$ 10.35
Drill Operators.....	\$ 10.00
Excavator Operators (Gradall Operators) .....	\$ 11.86
Front-End Loader Operators .....	\$ 9.35
Fuel and Lubricant Service Truck Drivers.....	\$ 7.23
Grade Checkers .....	\$ 7.22
Hydro-Seeder Operators .....	\$ 10.75
Log Skidder Operators .....	\$ 15.00
Mechanics.....	\$ 11.89
Mobile Mixer Operators.....	\$ 10.71
Motor Grader Operators	
Fine Grade .....	\$ 11.61
Rough Grade.....	\$ 11.87
Oiler Greasers.....	\$ 10.50
Pavement Marker Operators .....	\$ 10.20
Pavement Marking Truck Operators.....	\$ 8.75
Pavement Planning	
Groundman .....	\$ 11.00
Operators .....	\$ 10.25
Pile Driver Operators.....	\$ 14.50
Pipe Boring/Jacking Machine Operators.....	\$ 8.38
Plant Operators.....	\$ 10.00
Roller Operators	
Finish .....	\$ 9.68
Rough.....	\$ 8.66
Scraper Pan Operators .....	\$ 9.50
Shot Blast Machine Operators.....	\$ 7.75
Shovel Operators .....	\$ 10.45
Slip-Form Paver Operators.....	\$ 10.82
Slurry Seal Paver	
Machine Operators.....	\$ 9.38
Truck Drivers.....	\$ 9.00

Stabilizer Operators.....	\$ 7.94
Stone Spreader Operators .....	\$ 10.90
Subgrade Machine Operators .....	\$ 8.75
Tractor Operators	
Crawlers .....	\$ 8.02
Utility .....	\$ 9.16
Transit Mix Truck Drivers .....	\$ 9.75
Trenching Machine Operators .....	\$ 10.66
Reinforcing metal workers.....	\$ 21.20
Sheet Metal Worker .....	\$ 8.90
SIGN ERECTOR.....	\$ 17.25
Structural workers .....	\$ 16.70
Truck drivers:	
Heavy Duty	
Over 7 c.y.....	\$ 11.03
Under 7 c.y.....	\$ 10.93
Multi, Tandem and Single Rear Axle .....	\$ 8.14
Welder .....	\$ 12.99

.....

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

.....

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

.....

END OF GENERAL DECISION.

.....

GENERAL DECISION: VA20070011 01/25/2008 VA11

Date: January 25, 2008

General Decision Number: VA20070011 01/25/2008

Superseded General Decision Number: VA20030011

State: Virginia

Construction Type: Highway

Counties: Charles\*, Chesterfield, Colonial Heights\*, Dinwiddie, Goochland, Hanover, Henrico, Hopewell\*, New Kent, Petersburg\*, Powhatan, Prince George and Richmond\* Counties in Virginia.

\*INDEPENDENT CITIES

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

Modification Number	Publication Date
0	02/09/2007
1	03/30/2007
2	01/25/2008

\* ELEC0666-008 12/01/2007

	Rates	Fringes
Electricians (Including Traffic Signal Installers/Maintainers) .....	\$ 26.95	30%

.....

\* SUVA1999-011 02/11/1999

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator .....	\$ 10.10	
BLASTER .....	\$ 10.47	
Carpenters Structure .....	\$ 11.31	

Concrete Finisher.....	\$ 11.24
Deckhand.....	\$ 8.62
FENCE ERECTOR .....	\$ 9.65
Flagger .....	\$ 8.71
Form Setter.....	\$ 9.56
Guardrail erector .....	\$ 9.51
Laborers:	
Asphalt Rakers.....	\$ 9.79
Construction Workers I (Skilled Laborers) .....	\$ 9.50
Construction Workers II (Laborers).....	\$ 7.83
Landscape Workers .....	\$ 7.42
Pipelayers .....	\$ 9.22
Power Tool Operators .....	\$ 8.50
MASON	
Structure .....	\$ 10.00
Painter, Bridge .....	\$ 13.57
Painters.....	\$ 10.00
Plumbers.....	\$ 14.31
Power equipment operators:	
Air Compressor Operators.....	\$ 20.00
Asphalt Distributor Operators .....	\$ 10.38
Asphalt Paver Operators .....	\$ 9.71
Backhoe Operators .....	\$ 11.29
Bulldozer Operators, Utility.....	\$ 10.31
Bulldozer Operators .....	\$ 10.58
Concrete Finish Machine Operators, Utility .....	\$ 11.04
Concrete Finish Machine/Screeed Operators (Bridge) ....	\$ 12.30
Concrete Paving Machine Operators.....	\$ 12.15
Concrete Pump Operators.....	\$ 8.33
Concrete Saw Operators.....	\$ 8.25
Crane, Derrick, Dragline Operators	
1 yd. & under.....	\$ 12.25
Over 1 yd.....	\$ 13.28
Crusher Tender Operators .....	\$ 10.35
Drill Operators.....	\$ 9.13
Excavator Operators (Gradall Operators) .....	\$ 11.82
Front-End Loader Operators .....	\$ 10.37
Fuel and Lubricant Service Truck Drivers.....	\$ 10.25
Grade Checkers .....	\$ 7.28

Hydro-Seeder Operators .....	\$ 12.72
Log Skidder Operators .....	\$ 15.00
Mechanics .....	\$ 13.46
Mobile Mixer Operators .....	\$ 10.71
Motor Grader Operators	
Fine Grade .....	\$ 12.50
Rough Grade.....	\$ 11.61
Pavement Marker Operators .....	\$ 9.93
Pavement Marking Truck Operators.....	\$ 10.86
Pavement Planning	
Groundman .....	\$ 8.93
Operators .....	\$ 10.49
Pile Driver	
Leadsman .....	\$ 10.65
Operators .....	\$ 11.54
Pipe Boring/Jacking Machine Operators.....	\$ 8.38
Plant Operators .....	\$ 18.75
Roller Operators	
Finish .....	\$ 9.75
Rough.....	\$ 8.56
Scraper Pan Operators .....	\$ 9.82
Shot Blast Machine Operators.....	\$ 7.75
Shovel Operators .....	\$ 10.45
Slip-Form Paver Operators.....	\$ 12.85
Slurry Seal Paver	
Machine Operators .....	\$ 9.38
Truck Drivers .....	\$ 9.00
Stabilizer Operators.....	\$ 9.70
Stone Spreader Operators .....	\$ 10.83
Subgrade Machine Operators .....	\$ 11.25
Tractor Operators	
Crawlers .....	\$ 8.02
Utility .....	\$ 9.67
Transit Mix Truck Drivers .....	\$ 12.50
Trenching Machine Operators .....	\$ 10.46
Vacuum Machine Operators.....	\$ 9.25
Reinforcing metal workers.....	\$ 13.94
Sheet Metal Worker .....	\$ 8.90
SIGN ERECTOR.....	\$ 8.90
Structural workers .....	\$ 15.96
Truck drivers:	
Heavy Duty .....	\$ 9.11
Multi, Tandem and Single Rear Axle .....	\$ 8.89
WATER PROOFER .....	\$ 7.28

Welder ..... \$ 12.99

.....

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

.....

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

.....

END OF GENERAL DECISION.

.....

GENERAL DECISION: VA20080016 07/25/2008 VA16

Date: July 25, 2008

General Decision Number: VA20080016 07/25/2008

Superseded General Decision Number: VA20070016

State: Virginia

Construction Type: Highway

Counties: Accomack, Amelia, Brunswick, Caroline, Emporia\*, Essex, Franklin\*, Greensville, King And Queen, King William, Lancaster, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Northampton, Northumberland, Nottoway, Orange, Rappahannock, Richmond, Southampton, Surry, Sussex and Westmoreland Counties in Virginia.

\*INDEPENDENT CITIES

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

Modification Number	Publication Date
0	02/08/2008
1	07/25/2008

\* SUVA1996-010 09/24/1996

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator.....	\$ 10.10	
BLASTER .....	\$ 10.55	
Carpenters:		
Structure .....	\$ 11.52	
Concrete Finisher.....	\$ 10.41	
Deckhand.....	\$ 13.49	
Electricians .....	\$ 19.51	
FENCE ERECTOR .....	\$ 9.08	
Flagger .....	\$ 9.80	

Form Setter .....	\$ 10.39
Guardrail erector .....	\$ 7.81
Laborers:	
Asphalt Rakers .....	\$ 9.10
Construction Workers I (Skilled Laborers) .....	\$ 8.07
Construction Workers II (Laborers) .....	\$ 7.64
Landscape Workers .....	\$ 6.55
Masons, Structure .....	\$ 9.00
Pipelayers .....	\$ 7.92
Power Tool Operators .....	\$ 8.09
MASON	
Structure .....	\$ 9.00
Painter, Bridge .....	\$ 17.50
PAINTER .....	\$ 9.00
Plumbers.....	\$ 14.31
Power equipment operators:	
Air Compressor Operators.....	\$ 10.15
Asphalt Distributor Operators .....	\$ 9.32
Asphalt Paver Operators .....	\$ 9.83
Backhoe Operators .....	\$ 9.59
Bulldozer Operators, Utility .....	\$ 9.00
Bulldozer Operators .....	\$ 10.56
Concrete Finish Machine Operators, Utility .....	\$ 9.75
Concrete Finish Machine/Screed Operators (Bridge) ....	\$ 13.00
Concrete Paving Machine Operators.....	\$ 11.00
Concrete Pump Operators.....	\$ 8.33
Concrete Saw Operators.....	\$ 8.06
Crane, Derrick, Dragline Operators	
1 yd. and under .....	\$ 13.34
Over 1 yd.....	\$ 13.51
Crusher Tender Operators .....	\$ 10.35
Drill Operators.....	\$ 8.50
Excavator Operators .....	\$ 10.01
Front-End Loader Operators	
2 yds. and under.....	\$ 9.25
Over 2 yds.....	\$ 10.03
Fuel and Lubricant Service Truck Drivers.....	\$ 9.00
Gradall Operators.....	\$ 9.64
Grade Checkers .....	\$ 7.33
Hydro-Seeder Operators .....	\$ 12.07
Log Skidder Operators .....	\$ 15.00
Mechanics.....	\$ 12.06
Mobile Mixer Operators .....	\$ 10.51

Motor Grader Operators	
Fine Grade .....	\$ 12.18
Rough Grade .....	\$ 10.97
Oiler Greaser.....	\$ 10.00
Pavement Marker Operators .....	\$ 9.09
Pavement Marking Truck Operators.....	\$ 8.89
Pavement Planning	
Groundmen .....	\$ 8.00
Operators .....	\$ 8.80
Pile Driver	
Leadsman .....	\$ 11.65
Operators .....	\$ 12.50
Pipe Boring/Jacking Machine Operators.....	\$ 8.38
Plant Operators.....	\$ 10.00
Roller Operators	
Finish .....	\$ 8.61
Rough.....	\$ 8.35
Scraper Pan Operators .....	\$ 9.38
Shot Blast Machine Operators.....	\$ 10.00
Shovel Operators .....	\$ 10.35
Slip-Form Paver Operators.....	\$ 9.50
Slurry Seal Paver	
Machine Operators .....	\$ 9.38
Truck Drivers.....	\$ 9.00
Stabilizer Operators.....	\$ 8.32
Stone Spreader Operators .....	\$ 8.69
Subgrade Machine Operators .....	\$ 8.80
Tractor Operators	
Crawlers .....	\$ 7.25
Utility .....	\$ 7.29
Transit Mix Truck Drivers .....	\$ 9.75
Trenching Machine Operators .....	\$ 10.13
Vacuum Machine Operators.....	\$ 10.00
Reinforcing metal workers.....	\$ 14.78
Sheet Metal Worker .....	\$ 14.00
SIGN ERECTOR.....	\$ 11.13
Structural workers .....	\$ 14.00
TRAFFIC SIGNALIZATION:	
Traffic Signal Installation	
Maintainers .....	\$ 16.00
Truck drivers:	
Heavy Duty	
Over 7 c.y.....	\$ 9.18
Under 7 c.y.....	\$ 8.68

Multi-Tandem Single Rear Axle .....\$ 8.17  
WATER PROOFER .....\$ 8.00  
Welder .....\$ 14.00

.....

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

.....

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

.....

END OF GENERAL DECISION.

.....

**ATTACHMENT 4 TO EXHIBIT I**

SF030AF-0702

Reissued July 9, 2002

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

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

Females- 6.9%  
Minorities - See Attachment "A"

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

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

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

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY**

**CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

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

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

union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even though the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246. as amended.
13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from Its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**ATTACHMENT A**

Economic Area	Goal (Percent)
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA.....	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg.	
6800 Roanoke, VA.....	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	

Non-SMSA Counties .....	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll; VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland; VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski; VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista; VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg; VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton.	
022 Richmond, VA:	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA.....	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg.	
6760 Richmond, VA.....	24.9
VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.	
Non-SMSA Counties .....	27.9
VA Albermarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA .Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023 Norfolk - Virginia Beach - Newport News VA:	
SMSA Counties:	
5680 Newport News- Hampton, VA.....	27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.	
5720 Norfolk - Virginia Beach - Portsmouth, VA - NC .....	26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.	
Non-SMSA Counties .....	29.7
NC Bertie; NC Camden; NC Chowan; ,NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin.	
Washington, DC:	
020 Washington, DC.	
SMSA Counties:	
8840 Washington, DC - MD - VA .....	28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William VA Alexandria; VA Fairfax City; VA Falls Church.	
Non- SMSA Counties .....	25.2
MD Calvert; MD Frederlck; MD St. Marys; MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spottsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
Tennessee:	
052 Johnson City - Kingsport - Brlstol, TN - VA	
SMSA Counties:	

3630 Johnson City - Kingsport -Bristol, TN-VA .....2.6  
    TN Carter; TN HawkIns; TN Sullivan; TN Washington; VA Scott: VA  
    Washington;VA Bristol.

Non-SMSA Counties .....3.2  
    TN Greene; TN Johnson; VA Buchanan;VA Dickenson; Va Lee;  
    VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell;  
    WV Mercer.

Maryland

019 Baltimore MD:

Non-SMSA Counties .....23.6  
    MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset;  
    MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.

**ATTACHMENT 5 TO EXHIBIT I**

**DEBARMENT AND SUSPENSION CERTIFICATION**

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

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

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

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

**ATTACHMENT 6 TO EXHIBIT I**

**CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

**ATTACHMENT 7 TO EXHIBIT I**

**COMPLIANCE WITH 23 U.S.C. §129(A)(3) AND WITH THE  
AGREEMENT BETWEEN THE VIRGINIA DEPARTMENT OF TRANSPORTATION  
AND THE FEDERAL HIGHWAY ADMINISTRATION  
FOR FUNDING FOR THE DEVELOPMENT, DESIGN, AND CONSTRUCTION  
OF ROUTE 460  
(THE “SECTION 129 AGREEMENT”)**

**1. Certification of Adequate Maintenance**

- a. The Section 129 Agreement requires the Department to annually certify to the FHWA that the Project is being adequately maintained.
- b. To enable the Department to issue such certifications, the Concessionaire shall issue to the Department not later 15 days after the end of each calendar year, starting with the calendar year in which the first Service Commencement Date occurs, a written certificate, in form reasonably acceptable to the Department, certifying that the Project is being adequately maintained. If FHWA prescribes a form of certificate from the Department, then the Concessionaire shall deliver to the Department a certificate in the same form.

**2. Annual Audit of Records**

- a. The Section 129 Agreement requires the Department to annually audit the records of the Project for compliance with the provisions of the Section 129 Agreement, and to report the audit results to the FHWA. The Section 129 Agreement provides that in lieu of the Department performing the audit, the Department may deliver to the FHWA a report of an independent auditor furnished by the Concessionaire.
- b. To enable the Department to comply with such annual audit requirement as it relates to compliance with the obligation in the Section 129 Agreement to adequately maintain the Project, the Concessionaire shall prepare and deliver to the Department reports recording the Concessionaire’s performance in meeting the requirements of the Performance Requirements Baseline Tables, as more particularly set forth in the Technical Requirements. The Department shall have the right to deliver to the FHWA copies of such reports, as well as copies of reports from the Independent Engineer of its performance inspections and its assessments of the accuracy of the Concessionaire’s operations and maintenance records for the Project. In addition, the Concessionaire shall permit the FHWA to audit the Concessionaire’s operations and maintenance records for the Project upon request.
- c. If the FHWA requires an annual audit to verify compliance with the Section 129 Agreement’s provisions regarding use of Toll Revenues, then to enable the Department to comply with such annual audit requirement, the Concessionaire shall deliver to the Department, not later than 90 days after the end of each Fiscal Year of the Concessionaire during the Term, an audited financial

statement. The audited financial statement shall include statements of revenues and expenses, assets and liabilities, and net profits from operations. The audited statements shall be prepared by a reputable, independent certified public accountant according to GAAP, consistently applied. The Department shall have the right to deliver copies of such audited statements to the FHWA.

**ATTACHMENT 8 TO EXHIBIT I**

**COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

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

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

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

At the Concessionaire's request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, the Concessionaire certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department. A request for a waiver shall be treated as a Concessionaire request for a Deviation under Section 8.10 of the Agreement.

**BUY AMERICA CERTIFICATE**

**CERTIFICATE OF COMPLIANCE**

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

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Concessionaire's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Or

Certificate for Noncompliance

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

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Concessionaire's Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT J

### EMPLOYMENT RELATED MATTERS

#### 1. Labor and Wages

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

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

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

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

#### 2. Equal Employment Opportunity

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

- record of all applicants for employment
- new hires by race, work classification, hourly rate, and date employed

- minority and non-minority employees employed in each work classification
- changes in work classifications
- employees enrolled in approved training programs and the status of each
- minority subcontractor or subcontractors with meaningful minority group representation
- copies of Form C-57 submitted by subcontractors

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

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

It is the policy of this Company to assure that applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship or on-the-job training.

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

- (d) Dissemination of Policy:

1. Members of the Concessionaire's staff who are authorized to hire, supervise, promote, and discharge employees or recommend such action or are substantially involved in such action shall be made fully aware of and shall implement the Concessionaire's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and at least once every 6 months thereafter, at which time the Concessionaire's EEO policy and its implementation shall be reviewed and explained. The meetings shall be

conducted by the EEO Officer or another knowledgeable company official.

- b. New supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Concessionaire's EEO obligations within 30 days following their reporting for duty with the Concessionaire.
  - c. The EEO Officer or appropriate company official shall instruct employees engaged in the direct recruitment of employees for the project relative to the methods followed by the Concessionaire in locating and hiring minority group employees.
2. In order to make the Concessionaire's EEO policy known to all employees, prospective employees, and potential sources of employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Concessionaire shall take the following actions:
- a. Notices and posters setting forth the Concessionaire's EEO policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.

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

- b. The Concessionaire's EEO policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- (e) Recruitment:
- 1. When advertising for employees, the Concessionaire shall include in all advertisements for employees the notation "An Equal

Opportunity Employer” and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

2. Unless precluded by a valid bargaining agreement, the Concessionaire shall conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, state employment agencies, schools, colleges, and minority group organizations. The Concessionaire shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to it for employment consideration.
  3. The Concessionaire shall encourage its employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.
- (f) Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.
1. The Concessionaire shall conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of personnel.
  2. The Concessionaire shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.
  3. The Concessionaire shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Concessionaire shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected persons.
  4. The Concessionaire shall investigate all complaints of alleged discrimination made to it in connection with obligations under the Agreement, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, corrective action shall include those persons. Upon completion of each investigation, the Concessionaire shall inform every complainant of all avenues of appeal.

(g) Training:

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

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

1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.
2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions shall be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.
3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Concessionaire, the

Concessionaire shall so certify to the Department and shall set forth what efforts he made to obtain the information.

4. If a union is unable to provide the Concessionaire with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Concessionaire shall, through its recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group persons and women. If union referral practice prevents the Concessionaire from complying with the EEO requirements, the Concessionaire shall immediately notify the Department.
- (i) Subcontracting: The Concessionaire shall use best efforts to use minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Concessionaires shall obtain lists of MBE, DBE, and WBE construction firms from the Department. If MBE, DBE, or WBE goals are established in the proposal, the Concessionaire shall comply with the requirements of Section 3 of this Exhibit. The Concessionaire shall use best efforts to ensure subcontractor compliance with its EEO obligations.
1. Records and Reports: The Concessionaire shall keep such records as are necessary to determine compliance with its EEO obligations. The records shall be designed to indicate the following:
    - i. the number of minority and nonminority group members and females employed in each work classification on the project
    - ii. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and females if unions are used as a source of the work force
    - iii. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees
    - iv. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees
  2. Records shall be retained for a period of three years following completion of the work and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

3. Each month for the first three months after construction begins and every month of July thereafter for the duration of the Project, Form C-57 shall be completed to indicate the number of minority, nonminority, and female employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within three weeks after the reporting period. Failure to do so may result in delay of approval of the Concessionaire's monthly progress estimate for payment.

### 3. Use of Minority Business Enterprises (MBEs)

The Concessionaire shall comply with all the requirements of the Department's "Special Provision for Section 107.15" dated January 17, 2008 (attached hereto as Attachment 1). "Special Provision for Section 107.15" amends and supersedes Section 107.15 of the *2007 Road and Bridge Specification* in its entirety and shall be read in conjunction with Section 25.03 of the Comprehensive Agreement.

### 4. Civil Rights

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

subcontractors (including haulers and suppliers as applicable).

- Form C-64 (Company Employment)
- Letter Designating EEO Officer
- Semi-annual Minutes of an EEO Meeting
- Form C-57 (Project Employment)

ii. The Design-Build Contractor and its subcontractors are subject to formal Department EEO Contractor Compliance Reviews at least annually.

2. Labor Compliance: The Concessionaire shall submit, or cause the submission, of the following. In addition, the Concessionaire's employees (and the employees of its subcontractors) may be subject to interviews by the Department.

i. weekly payrolls from the Design-Build Contractor and its subcontractors and haulers;

ii. Form C-28 (Basic Hourly Rates paid by Contractor); and

iii. Form C-56 (Statement of Compliance).

3. DBE Compliance:

i. DBE subcontractors, suppliers, manufacturers and haulers must be listed and submitted on Form C-111, indicating the task(s) assigned and the approximate dollar value of the planned work pursuant to "Special Provision for Section 107.15" dated January 17, 2008.

ii. Payments made to DBE firms must be submitted on form C-63 on a quarterly basis. Form C-63 and submittal information for the form is provided in the Department's Construction Directive Memorandum CD-2007-6 included in Attachment 5.

iii. All DBE firms are subject to formal DBE contract compliance reviews at least once during active participation on the project.

iv. "Special Provision for Section 107.15" dated January 17, 2008, provides guidance on removal of a DBE firm from the contract or for substituting another firm for all or portions of items of work designated to be performed by a DBE firm. Advance approval must be obtained from the district Civil Rights office.

4. SWAM Compliance:
  - i. SWAM subcontractors, suppliers, manufacturers and haulers should be listed and submitted on Form C-111, indicating the task(s) assigned and the approximate dollar value of the planned work. See “Special Provision for Section 107.15” dated January 17, 2008.
  - ii. Payments made to SWAM firms must be submitted on form C-63 on a quarterly basis in order to receive credit. See Construction Memorandum CD-2007-6.
  
5. On-the-Job Training Compliance (applicable only during the Work Period):
  - i. This project has been assigned a goal of six (6) trainees, as indicated in the Special Provision for Section 518 of the 2007 Road and Bridge Specifications.
  - ii. Upon notification of intent to assign employees into an approved program, the Department’s Civil Rights office will provide Form C-65, which initiates the training process. The Concessionaire is responsible for submitting the completed form for approval by the District Civil Rights Manager (“DCRM”).
  - iii. Trainees may be current employees, newly hired employees, or individuals from the Business Opportunity and Workforce Development (“BOWD”) Center. The BOWD Center is a Department developmental supportive services program and partnering initiative funded by FHWA for selected DBE firms of various skill and competence levels interested in entering, enhancing, or expanding highway contracting opportunities with prime contractors/consultants. The partnering initiative between prime contractors/consultants and BOWD Center DBE firms provides the opportunity for the further development of DBE firms through performance on contracts and guidance from prime contractors/consultants. The intent of this partnering initiative is to increase capacity by perfecting existing skills and knowledge, expanding into new work areas, and prime contractor/consultant joint venturing with DBE firms. The Concessionaire is encouraged to achieve all or a percentage of the required DBE participation/goals determined for this project by the utilization of approved BOWD approved firms. To assist the Concessionaire in taking advantage of this opportunity for utilization of approved BOWD firms, please contact the BOWD Center for additional information, details,

resources, and support. For further information on the BOWD Center and to view the DBE profiles, please go to [www.virginia.org/business/BOWD.asp](http://www.virginia.org/business/BOWD.asp). The BOWD Center can be contacted at (804) 662-9555 or via email to [BOWDCenter@vdotvirginia.gov](mailto:BOWDCenter@vdotvirginia.gov). Trainees may not have received prior training in the classification planned for the training opportunity. A journeyman in that classification must be on site and be available to assist with the training. The DCRM must be in agreement with the selected candidate.

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

**ATTACHMENT 1**

**S107HF0-0708**

VIRGINIA DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION FOR  
**SECTION 107.15**

January 17, 2008c

**Section 107.15** of the Specifications is replaced by the following:

**Section 107.15—Use of Disadvantaged Business Enterprises (DBEs)**

**Disadvantaged Business Enterprise (DBE) Program Requirements.**

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

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

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated herein and current at the time of the proceedings. Where applicable, the Department will notify the Contractor of any changes to the appeal requirements, processes, and procedures after receiving notification of the Contractor's desire to appeal.

**Miscellaneous DBE Program Requirements.**

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

accepting and executing this contract, the Contractor agrees to assume these contractual obligations and to bind the Contractor's subcontractors contractually to the same at the Contractor's expense.

**Required Contract Provisions.**

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

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

**Bank Services.**

The Contractor and each subcontractor are encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services and the fees charged for services typically will not be eligible for DBE Program contract goal credit. Such information is available from the VDOT's Internet Civil Rights Division website: [www.Virginiadot.org/business/bu-civil-rights-support-specs](http://www.Virginiadot.org/business/bu-civil-rights-support-specs).

**DBE Certification.**

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Department of Minority Business Enterprises or VDOT in accordance with federal and VDOT guidelines. A directory listing of certified DBE firms can be obtained from Department of Minority Business Enterprises Internet website: [www.dmb.state.va.us](http://www.dmb.state.va.us)

**DBE Program-related Certifications Made by Bidders\Contractors.**

Bids will be considered non-responsive and will be rejected for failure to comply with the requirements of this Special Provision and the contract specifications. By submitting a bid and by entering into any contract on the basis of that bid, the bidder/Contractor certifies to each of the following DBE Program-related conditions and assurances:

- (1) That the management and bidding officers of its firm agree to comply with the bidding and project construction and administration obligations of the USDOT DBE Program requirements and regulations of 49 CFR Part 26 as amended, and VDOT's Road and Bridge Specifications and DBE Program requirements and regulations.
- (2) Under penalty of perjury and other applicable penal law that it has complied with the DBE Program requirements in submitting the bid, and shall comply fully with these requirements in the bidding, award, and execution of the contract.
- (3) To ensure that certified DBE firms have been given full and fair opportunity to participate in the performance of the contract. The bidder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had and will have an opportunity to compete for and perform work on the contract. The bidder further certifies that the bidder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract.

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

- (4) As a bidder good faith efforts were made to obtain certified DBE participation in the proposed contract at or above the goal for certified DBE participation established by VDOT. It has submitted as a part of its bid a true, accurate, complete, and detailed written explanation of the good faith efforts it performed to meet the contract goal for certified DBE participation.
- (5) Once awarded the contract, the Contractor shall make good faith efforts to utilize certified DBE firms to perform work designated to be performed by certified DBEs at or above the amount or percentage of the dollar value specified in the bidding documents. Further, the Contractor understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Contractor's own forces or those of an affiliate of the Contractor without the prior written consent of VDOT as set out within the requirements of this provision.

Once a contract is awarded, the Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for certified

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

- (6) Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. If it is awarded the contract and if VDOT determines that as the Contractor, a DBE or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract goals have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.
- (7) In the event a bond surety takes over the completion of work after VDOT has terminated the prime Contractor, the surety shall be obligated to meet the same DBE contract goals as were required of the original prime Contractor in accordance with the requirements of this specification.

#### **Designation of DBE Firms to Perform on Contract.**

The bidder, by signing and submitting its bid, certifies the DBE participation information submitted within the stated time thereafter is true, correct, and complete, and that the information provided includes the names of all certified DBE firms that will participate in the contract, the specific line item(s) that each listed certified DBE firm will perform, and the creditable dollar amounts of the participation of each listed certified DBE. The specific line item must reference the VDOT line number and item number contained in the proposal. The bidder further certifies, by signing its bid, it has committed to use each certified DBE firm listed for the specific work item shown to meet the contract goal for certified DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents.

By signing the bid, the bidder certifies on work it proposes to sublet, it has made good faith efforts to seek out and consider certified DBEs as potential subcontractors. The bidder shall contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond

effectively, and shall retain on file proper documentation to substantiate its good faith efforts.

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

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

When a Contractor has executed a subcontract with a certified DBE firm prior to official notification of the DBE firm's loss of eligibility, the Contractor may continue to use the firm on the contract and shall continue to receive DBE credit toward its DBE goal for the subcontractor's work.

When VDOT has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before VDOT has issued the notice of its ineligibility shall count toward the contract goal.

- (2) If a certified DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, the Contractor must promptly request approval to substitute or replace that firm in accordance with this section of this Special Provision. The Contractor, as aforementioned in (1) above, shall notify VDOT in writing before terminating and/or replacing the certified DBE that was committed as a condition of contract award or that is otherwise being used or represented to fulfill certified DBE contract obligations during the contract performance period. Written consent from the Department for terminating the performance of any DBE shall be granted only when the Contractor can demonstrate that the DBE is unable, unwilling, or ineligible to perform its obligations for which the Contractor sought credit toward the contract DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a certified DBE shall not be based on the Contractor's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a certified DBE.

(a) Contractor's Written Request to Terminate DBE

All Contractor requests to terminate, substitute, or replace a certified DBE shall be in writing, and shall include the following information:

- (i) The date the Contractor determined the certified DBE to be unwilling, unable, or ineligible to perform;
- (ii) The projected date that the Contractor shall require a substitution or replacement DBE to commence work if consent is granted to the request;
- (iii) A brief statement of facts describing and citing specific actions or inaction by the certified DBE giving rise to the Contractor's assertion that the certified DBE is unwilling, unable, or ineligible to perform;
- (iv) A brief statement of the affected certified DBE's capacity and ability to perform the work as determined by the Contractor;
- (v) A brief statement of facts regarding actions taken by the Contractor which are believed to constitute good faith efforts toward enabling the certified DBE to perform;
- (vi) The current percentage of work completed on each bid item by the certified DBE;
- (vii) The total dollar amount currently paid per bid item for work performed by the DBE;
- (viii) The total dollar amount per bid item remaining to be paid to the certified DBE for work completed, but for which the certified DBE has not received payment, and with which the Contractor has no dispute;
- (ix) The total dollar amount per bid item remaining to be paid to the certified DBE for work completed, but for which the certified DBE has not received payment, and over which the Contractor and/or the certified DBE have a dispute.

(b) Contractor's Written Notice to DBE of Pending Request to Terminate and Substitute With Another DBE

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

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

(c) Proposed Substitution of Another Certified DBE

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

When a DBE substitution is necessary the Contractor shall submit in writing the name of another certified DBE firm, the proposed work to be performed by that firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The Contractor shall furnish all pertinent information including contract I.D. number, project number, bid item, item description, bid unit and bid quantity, unit price, and total price. In addition, the Contractor shall submit documentation for the requested substitute DBE as described in this section of this Special provision.

Should the Contractor be unable to commit the remaining required dollar value to the substitute DBE, the Contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. The Department

will review the quality, thoroughness, and intensity of those efforts. Efforts that are merely superficial or pro-forma will not be considered good faith efforts to meet the contract goal for certified DBE participation. The Contractor must document the steps taken that demonstrate good faith efforts to obtain participation as set forth in the Good Faith Efforts Described section of this Special Provision.

### **Bidding Procedures.**

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

### **Contract Goal, Good Faith Efforts Specified.**

All bidders evidencing the attainment of DBE goal commitment equal to or greater than the required DBE goal established for the project must submit completed Form C-111 as a part of the bid documents. Form C-111 may be submitted electronically or may be faxed to the Department, but in no case shall the bidder's Form C-111 be received later than 2 hours after the time stated in the bid proposal for the receipt of bids.

If, at the time of submitting its bid the bidder knowingly cannot meet or exceed the required DBE contract goal, it shall submit Form C-111 exhibiting the DBE participation it attained as a part of its bid documents. The bidder shall then submit its good faith efforts within two (2) working days after the bid opening.

The lowest responsive and responsible bidder must submit its properly executed Form C-112 within two (2) working days after the bids have been opened and the determination of apparent lowest bidder. If, after review of the apparent lowest bid, VDOT determines the DBE requirements have not been met, the apparent lowest successful bidder must submit good faith documentation, which must be received by the Contract Engineer within two (2) working days after official notification of such failure to meet the aforementioned DBE requirements.

### **Good Faith Efforts Described.**

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

- (1) Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to certified DBEs who have the capability to

perform the work of the contract. Examples include: advertising in at least one daily newspaper of general circulation; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. The bidder shall solicit this interest no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation. The bidder shall determine with certainty if the DBEs are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts on Department standard good faith documentation forms;

- (2) Selecting portions of the work to be performed by certified DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items completely or with its own forces;
- (3) Providing interested certified DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation;
- (4) Negotiating for participation in good faith with interested DBEs;
  - (a) Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs that were considered; dates DBEs were contacted, a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work;
  - (b) A bidder using good business judgment should consider a number of factors in negotiating subcontractors, including certified DBE subcontractors, and should take a firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using certified DBEs is not sufficient reason for a bidder's failure to meet the contract goal for certified DBE participation, as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a bidder to

perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make diligent good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference can be shown by the bidder to be excessive, unreasonable; or greater than would normally be expected by industry standards;

- (5) A bidder cannot reject a certified DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities. The certified DBE's standing within its industry, membership in specific groups, organizations, associations and political or social affiliations, and union vs. non-union employee status are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal for certified DBE participation;
- (6) Making efforts to assist interested certified DBEs in obtaining bonding, lines of credit, or insurance as required by VDOT or by the bidder/Contractor;
- (7) Making efforts to assist interested certified DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in these provisions;
- (8) Effectively using the services of appropriate personnel from VDOT

#### **Bid Rejection.**

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

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

If the lowest bidder is rejected for failure to submit required documentation, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth Transportation Board (CTB).

## **Documentation, and Administrative Reconsideration of Good Faith Efforts.**

### **During Bidding**

As described in the Contract Goal, Good Faith Efforts Specified section of this Special Provision, the bidder must provide certified written documentation of its good faith efforts made to meet the DBE contract goal as proposed by VDOT within the timeframe specified in this section of the provision. No extension of time for submittal of good faith effort documentation will be allowed. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain certified DBE firm participation in the proposed contract work.

However, regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111 and C-112 and good faith efforts as aforementioned, or face potential bid rejection. If a bidder does not submit its completed and executed C-111 or C-112 when required by this Special Provision the bidder's bid will be considered non-responsive and will be rejected.

Where the Department upon initial review of the bid results determines the apparent low bidder has failed or appears to have failed to meet the requirements of the Contract Goal, Good Faith Efforts Specified section of this Special Provision and has failed to adequately document that it made a good faith effort to achieve sufficient DBE participation as specified in the bid proposal, that firm upon notification of the Department's initial determination will be offered the opportunity for administrative reconsideration before VDOT rejects that bid as non-responsive. The bidder shall address such request for reconsideration in writing to the Contract Engineer within five (5) days of receipt of notification by the Department and shall be given the opportunity to discuss the issue and present its evidence in person to the Administrative Reconsideration Panel. The Administrative Reconsideration Panel will be made up of VDOT Division Administrators for the Civil Rights, Scheduling and Contract and Procurement divisions, none of who took part in the initial determination that the bidder failed to make the goal or make adequate good faith efforts to do so. After reconsideration, VDOT shall notify the bidder in writing of its decision and explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid.

However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the contract or any administrative sanctions as may be appropriate.

### **During the Contract**

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

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the Engineer to substantiate that failure was due solely to quantitative underrun(s) or elimination of items subcontracted to DBEs, and that all feasible means have been used to obtain the required participation. The Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract.

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

### **DBE Participation for Contract Goal Credit**

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

- (1) Cost-plus subcontracts will not be considered to be in accordance with normal industry practice and will not normally be allowed for credit.

- (2) The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE will be counted toward meeting the contract goal for certified DBE participation in accordance with the Designation of DBE Firms to Perform on Contract section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the certified DBE firm itself or subcontracted by the certified DBE to other certified DBE firms.
- (3) When a certified DBE performs work as a participant in a joint venture, the Contractor may count toward the DBE goal only that portion of the total dollar value of the contract equal to the distinctly defined portion of the contract work that the DBE has performed with the DBE's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a certified DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Contractor seeks to claim the certified DBE's credit toward the DBE contract goal.

When a DBE subcontracts part of the work of the contract to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE's subcontractor at a lower tier is a VDOT certified DBE. Work that a certified DBE subcontracts to either a non-DBE firm or to a non-certified DBE firm will not count toward the DBE contract goal. The cost of supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or the prime's affiliated firms will not count toward the contract goal for certified participation.

- (4) The Contractor may count expenditures to a certified DBE subcontractor toward the DBE contract goal only if the certified DBE performs a Commercially Useful Function (CUF) on that contract.
- (5) A Contractor may not count the participation of a certified DBE subcontractor toward the Contractor's final compliance with the DBE contract goal obligations until the amount being counted has actually been paid to the certified DBE. A Contractor may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified by VDOT as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a VDOT certified DBE manufacturer.
  - (a) For the purposes of this Special Provision, a regular dealer is defined as a firm that owns, operates, or maintains a

store, warehouse, or other establishment in which the material, supplies, articles, or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the certified DBE firm shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

- (b) A certified DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the certified DBE both owns and operates distribution equipment for the products it sells and provides for the contract work. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis to be eligible for credit to meet the DBE contract goal.
  - (c) If a certified DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that certified DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the certified DBE regular dealer, who shall be responsible for their distribution.
  - (d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the material, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.
- (6) A Contractor may count toward the DBE contract goal the following expenditures to certified DBE firms that are not regular dealers or manufacturers for DBE program purposes:

- (a) The entire amount of fees or commissions charged by a certified DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.
  - (b) The entire amount of that portion of the construction contract that is performed by the certified DBE's own forces and equipment under the DBE's supervision. This includes the cost of supplies and materials ordered and paid for by the certified DBE for contract work, including supplies purchased or equipment leased by the certified DBE, except supplies and equipment a certified DBE subcontractor purchases or leases from the prime Contractor or its affiliates.
- (7) A Contractor may count toward the DBE contract goal one hundred (100) percent of the fees paid to a certified DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by VDOT to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. Nor could a Contractor count costs for the removal or relocation of excess material from or on the job site when the certified DBE trucking company is not also the manufacturer of or a regular dealer in those materials and supplies. The certified DBE trucking firm shall also perform a CUF on the project and not operate merely as a pass through for the purposes of gaining credit toward the DBE contract goal. Prior to submitting a bid, the Contractor shall determine, or contact the VDOT Civil Rights Division or its district Offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project.
- (8) The Contractor will receive DBE contract goal credit for the fees or commissions charged by and paid to a certified DBE broker who arranges or expedites sales, leases, or other project work or service arrangements provided that those fees are determined by VDOT to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that arranges for delivery of material, supplies, and equipment, or arranges project services but does not own or operate the delivery equipment necessary to transport materials,

supplies, or equipment to or from a job site. A broker typically shall not purchase or pay for the material, supplies, or equipment, and if the broker does purchase or pay for those items those costs will be reimbursed in full. To receive DBE contract goal credit VDOT must determine that the DBE broker has performed a CUF in providing the contract work or service.

### **Performing a Commercially Useful Function (CUF)**

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

### **Monitoring CUF Performance**

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

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

### **DBEs Must Perform a Useful and Necessary Role in Contract Completion**

A DBE does not perform a commercially useful function if the DBE's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

### **DBEs Must Perform The Contract Work With Their Own Workforces**

If a DBE does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE's contract with the DBE's own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, VDOT will presume that the DBE is not performing a commercially useful function and such participation will not be counted toward the contract goal.

### **Factors Used to Determine if a DBE Trucking Firm is Performing a CUF**

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

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

credit for the total fair market value actually paid for transportation services the lessee certified DBE firm provides on the contract;

- (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

EXAMPLE: DBE Firm X uses two (2) of its own trucks on a contract. The firm leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z. In all, full DBE credit would be allowed for the participation of eight (8) trucks. With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

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

#### **VDOT Makes Final Determination On Whether a CUF Is Performed**

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

#### **Verification of DBE Participation and Imposed Damages.**

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

The Contractor shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each month during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63 and certified on Form C-63A, or by copies of cancelled checks with appropriate identifying notations. Failure to provide the forms to the Engineer by the Contractor's monthly progress estimate date may result in delay of approval of the Contractor's monthly progress estimate for payment. The names and certification numbers of DBE firms provided by the Contractor on the various forms indicated in this Special Provision shall be exactly as shown on the Department's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the bidder as shown on Form C-32 or Form C-32A, or authorized by letter from the bidder. If certified DBE firms are used which have not been previously documented with the Contractor's bid and for which the Contractor now desires to claim credit toward the project goal, the Contractor shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE beginning work.

The Contractor shall submit to the Engineer its progress schedule as required by Section 103.06 of the Specifications or other such specific contract scheduling specification that may include contractual milestones, i.e., monthly or VDOT requested updates. The Contractor shall include a narrative of applicable DBE activities relative to work activities of the Contractor's progress schedule, including the approximate start times and durations of all DBE participation to be claimed for credit that shall result in full achievement of the DBE goal required in the contract.

On contracts awarded on the basis of good faith efforts, narratives or other agreeable format of schedule information requirements and

subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

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

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

#### **Documentation Required for Semi-final Payment.**

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

DBEs, will accompany the forms, indicating the amount, including any retainage that remains to be paid to the certified DBE(s).

**Documentation Required for Final Payment.**

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

**Prompt Payment Requirements.**

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

For purposes of this Special Provision, a subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by VDOT. When VDOT has made partial acceptance of a portion of the prime contract, the Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.07, and Section 109.09 of the Specifications.

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

The Contractor shall make payment of the subcontractor’s portion of the work within seven (7) days of the receipt of payment from VDOT in accordance with the requirements of Section 109.10 of the Specifications.

If the Contractor fails to make payment of the subcontractor's portion of the work within the timeframe specified herein, the subcontractor shall contact the Engineer and the Contractor's bonding company in writing. The bonding company and VDOT will investigate the cause for non-payment and, barring mitigating circumstances that would make the subcontractor ineligible for payment, ensure payment in accordance with the requirements of Section 109.10 of the Specifications.

The Department will withhold payment of the Contractor's monthly progress estimates until the Contractor ensures that the subcontractors have been promptly paid for the work that they have performed successfully and for which the Department has accepted and paid the Contractor.

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

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

### **Data Collection**

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

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

The above information can be submitted by means of the Annual Gross Receipts Survey as required in the Prequalification/Certification application.

All bidders, including DBE prime Contractor bidders, shall complete and submit to the Contract Engineer the Subcontractor/Supplier Solicitation and Utilization Form C-48 for each bid submitted within ten (10) days after the bid opening. Failure of bidders to submit this form in the timeframe specified will be cause for rejection of the bid.

### **Summary of Remedies Available to VDOT**

Failure of any bidder\Contractor to comply with the requirements of this Special Provision for Section 110.04 of the Virginia Road and Bridge Specifications, which is deemed to be a condition of bidding, or where a contract exists, is deemed to constitute a breach of contract shall be remedied in accordance with the following:

**Disadvantaged Business Enterprise (DBE) Program Requirements.**

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

**DBE Program-related Certifications Made by Bidders\Contractors**

Bids will be considered non-responsive and will be rejected for failure to comply with the requirements of this Special Provision and the contract specifications. Where a contract exists and where the Contractor, a DBE or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract goals have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

**Bid Rejection**

The failure of bidders to submit the required documentation within the timeframes specified in the Contract Goal, Good Faith Efforts Specified section of this Special Provision may be cause for rejection of the bid.

If the lowest bidder is rejected for failure to submit required documentation, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth Transportation Board (CTB).

**Documentation and Administrative Reconsideration of Good Faith Efforts**

**During Bidding**

Regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111 and C-112 and good faith efforts as aforementioned or face potential bid rejection. If a bidder does not submit its completed and executed

C-111 or C-112 when required by this Special Provision the bidder's bid will be considered non-responsive and will be rejected.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid. However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the contract or any administrative sanctions as may be appropriate.

#### **During the Contract**

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

#### **Verification of DBE Participation and Imposed Damages for Non-compliance**

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

#### **Prompt Payment Requirements**

The Department will withhold payment of the Contractor's monthly progress estimates until the Contractor ensures that the subcontractors have been promptly paid for the work that they have performed successfully, and for which the Department has accepted and paid the Contractor.

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

**Suspect Evidence of Criminal Behavior.**

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

**Suspected DBE Fraud**

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

**EXHIBIT K**

**AUTHORIZED REPRESENTATIVES**

[To Be Provided]

**EXHIBIT L**

**TECHNICAL REQUIREMENTS**

[Provided Separately]