

SECOND AMENDMENT
TO
ASSIGNMENT AND ASSUMPTION
AGREEMENT

DATED AS OF September 10, 2008

BY AND AMONG

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

AND

ALPHA NATURAL RESOURCES, LLC

AND

PIONEER GROUP, INC.

This **SECOND AMENDMENT TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "Amendment") is made and entered into as of September 10, 2008, by and between the Virginia Department of Transportation ("Department"), an Agency of the Commonwealth of Virginia ("Commonwealth" or "State"), Alpha Natural Resources, LLC ("Alpha"), and Pioneer Group, Inc., ("Pioneer") (Alpha and Pioneer are referred to individually or collectively as "Contractor" or "Contractors"), with reference to the following facts:

RECITALS

WHEREAS, Pursuant to the Public-Private Transportation Act of 1995, §§ 56-556, *et seq.*, of the Virginia Code (the "PPTA"), the Department and Kellogg, Brown & Root ("KBR") executed a Comprehensive Agreement ("Comprehensive Agreement") concerning the design, construction and maintenance of a controlled access highway called the Coalfields Expressway ("CFX");

WHEREAS, on January 11, 2006, the Department, Alpha, Pioneer and KBR entered into an Assignment and Assumption Agreement pursuant to which KBR assigned all of its rights and obligations under said Comprehensive Agreement to Alpha and Pioneer, and Alpha and Pioneer assumed all of KBR's rights and obligations under the Comprehensive Agreement, subject to certain obligations and conditions as set forth therein;

WHEREAS, on January 11, 2007, the Department, Alpha and Pioneer entered into a First Amendment to the Assignment and Assumption Agreement ("First Amendment to Assignment"), which provided, among other things, that all of Alpha's and Pioneer's obligations under the Comprehensive Agreement and Design-Build Contract ("Design-Build Contract") referenced in the First Amendment to Assignment would be suspended in order to allow good faith negotiations between the Department, Alpha and Pioneer for the purpose of modifying the Comprehensive Agreement to reflect the potential use of the value of Contractors' coal reserves and expertise in mining and large-scale earth moving operations to reduce estimated CFX development costs;

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

WHEREAS, consistent with the First Amendment to Assignment, the Department and Contractors continue to be of the opinion that the development of

such alternative alignments in order to take advantage of the potential value of Contractors' coal reserves and expertise in recovering said reserves potentially to offset a portion of CFX development costs is unique and complies with the intent of the General Assembly as expressed in §56-558(A)(1-3) of the PPTA;

WHEREAS, consistent with the First Amendment to Assignment, the Department, Alpha and Pioneer agree that the CFX, as proposed in Contractors' Studies, must be designed, permitted, and constructed in a phased approach, and the parties currently are negotiating extensive modifications to the Comprehensive Agreement, including the Design-Build Contract and certain other project agreements assigned to and assumed by the Contractors;

WHEREAS, Paramount Coal Company Virginia, LLC ("Paramont"), an indirect wholly owned subsidiary of Alpha, currently is conducting mining operations in the Hawks Nest mining area pursuant to Mining Permit Number 1101903 (as it may be revised from time to time, the "Hawks Nest Mining Permit") issued by the Virginia Department of Mines, Minerals and Energy ("DMME") through its Division of Mined Land Reclamation ("DMLR"), and United States Army Corp of Engineers ("USACE") Permit No. 04-K0014;

WHEREAS, Pioneer has contractual rights with respect to the mining operations in the Rockhouse mining area that are being undertaken pursuant to Mining Permit No. 1101823 issued by DMLR;

WHEREAS, the existing mining permits and mining plans may be, and it is the parties' intent that they will be, so modified to a post-mining land use of public use-public road use to accommodate the development, to rough-grade, of four-lane roadbeds that will be of sufficient width to accommodate the future development of a four-lane roadway which may include designed medians, shoulders, and highway drainage systems;

WHEREAS, current mining schedules call for completion of mining operations in the Hawks Nest area and Rockhouse area by the fall of 2010 and, in order to develop the permitted mining areas to a rough-grade roadbed as part of the CFX, Contractors must obtain revisions to the mining permits from DMME to change the post-mining land use and the backfilling and regrading plans, and incorporate the roadbed configuration into the permitted mining processes to accommodate the development of the rough-grade roadbeds;

WHEREAS, opportunities to develop, at substantial cost savings to the Department, a rough-grade roadbed on the Hawks Nest and Rockhouse areas are available for a limited time and such opportunities may begin to expire before the Department and Contractors are able to complete negotiation of modifications to the Comprehensive Agreement, Design-Build Contract and other project agreements;

WHEREAS, the Department prepared and submitted a grant application to the Transportation Partnership Opportunity Fund (“TPOF”) in December 2007, requesting \$5 million in FY 2008 and \$5 million in FY 2009 to reimburse Alpha for the development to rough-grade of the Hawks Nest area by incorporating a four-lane roadbed configuration into its active mining operations as a revised post-mining land use (“PMLU”);

WHEREAS, the Department prepared and submitted a grant application to the Transportation Partnership Opportunity Fund (“TPOF”) in December 2007, requesting \$5 million in FY 2008 and \$5 million in FY 2009 to reimburse Pioneer for the development to rough-grade of the Rockhouse area by incorporating a four-lane roadbed configuration into its active mining operations as a revised post-mining land use (“PMLU”);

WHEREAS, in April 2008, the conditional awards of separate TPOF grants to VDOT, each for \$5 million in FY 2008 (collectively “FY08 TPOF grants”) to partially finance the CFX project (associated with Hawks Nest and Rockhouse areas, respectively) were approved, subject to the terms and conditions set forth in the relevant TPOF decision documents (copies of which are attached as Exhibit 1), permitting the submission, for later consideration, of individual and separate TPOF grant applications requesting an additional \$5 million each in FY 2009; and

WHEREAS, because of the projected substantial cost savings and the limited availability of such opportunities to develop the Hawks Nest and Rockhouse areas as a part of ongoing mining projects in these areas, the Department and Contractors wish to take advantage of such opportunities prior to the completion of negotiation of modification of the Comprehensive Agreement, Design-Build Contract and other project agreements;

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

1. Purpose of This Amendment:

It is the purpose of this Amendment: (1) to provide for the development by Alpha of a rough grade roadbed, in accordance with the Contract Documents (as defined by Section 2 (c)), for that portion of the CFX that traverses the Hawks Nest mining area; and (2) to provide for the good faith negotiation and execution of a further agreement by the Department, Pioneer and Alpha, for the development by Pioneer of that portion of the CFX that traverses the Rockhouse area.

2. Alpha's Scope of Work for Hawks Nest Section:

a. Project Description: Alpha shall develop to rough-grade approximately 1.30 miles of four-lane roadbed in Buchanan County, Virginia that will be within a minimum width of 150 feet of right of way limits to accommodate the future development of a four-lane roadway which may include medians, shoulders, and highway drainage systems, which facilities are more particularly described by the Contract Documents (the "Hawks Nest Section"). Alpha shall cause this development to be incorporated into the ongoing mining operations conducted by Paramount under the Hawks Nest Mining Permit, by obtaining all appropriate revisions to Required Permits (as defined by Section 2 (b)), including the Hawks Nest Mining Permit. Alpha and the Department further understand and agree that Alpha shall either perform or cause Paramount or its affiliates or subcontractors to perform all Work (as defined by Section 2 (e)) or other obligations under the Contract Documents, but that Alpha shall remain responsible for the performance of all such Work and obligations.

The geographical scope of the roadbed is set forth on Attachment A hereto and as noted will generally run from Alpha's Station 1565+00 to Alpha's Station 1634+00. The Hawks Nest Section shall be undertaken as part of a permitted mining operation pursuant to the Contract Documents and all Work shall comply with the terms and conditions of the Contract Documents, including the Hawks Nest Mining Permit, which, along with other Required Permits, shall be revised, as necessary, to accommodate the development of the Hawks Nest Section as part of the mining process, and in accordance with the Contract Documents.

In the event that Alpha develops roadbed outside of the scope of this Amendment in anticipation of a donation of such roadbed (and associated right of way) to the Department, Alpha understands that the Department will require, as a condition to its acceptance of such donation, that: (1) the roadbed development is performed in accordance with the same specifications and standards as established by the Contract Documents; (2) the development activities are overseen and inspected, in accordance with same terms as the Contract Documents, by a qualified professional engineer who will document that such development activities were conducted in the same manner as required by the Contract Documents; and provide the Department, prior to its acceptance of the donation, permit certifications and inspection reports pertaining to the donated segments; and (3) the donation is made pursuant to documentation consistent with the terms and requirements of the Contract Documents.

b. Authorizations and Approvals: Alpha has in its possession, or it will secure, and shall provide the Department copies of, all approvals, revisions, and/or permits required by governmental agencies to conduct mining operations that will accommodate the development of a rough-grade roadbed in accordance with the Contract Documents, including, but not limited to, the Hawks Nest Mining Permit (collectively, as more particularly described on the attached Exhibit 2, "Required

Permits”). Alpha shall revise the Hawks Nest Mining Permit’s PMLU within the ROW Area (as defined by Section 2 (d)) to public use-public roads. Such mining permit revisions require obtaining landowners consent to the PMLU change. Alpha shall obtain such consent through ordinary course of business practices. Costs to revise the Hawks Nest Mining Permit to accommodate the Hawks Nest Section and to obtain and maintain all other Required Permits are included in the lump sum amounts referred in Section 2(j) below.

Prior to the submittal of any revisions to Required Permits, the Department and Alpha shall coordinate with one another to ensure that the revisions are consistent with the Contract Documents. If Alpha seeks revisions inconsistent with the Contract Documents, such revisions will be subject to the Department’s prior approval.

If Alpha fails either to submit applications for Required Permits or applications for revisions to Required Permits within six (6) months after the execution of this Amendment or to secure all Required Permits (all as identified by Exhibit 2) that are necessary to the development of the Hawks Nest Section as a rough grade road bed (public use-public road) as contemplated by Section 2 (a) in accordance with the Contract Documents within twelve (12) months after execution of this Amendment, such failure shall constitute an Event of Default by Alpha, and Department shall have recourse to the remedies provided by Section 7 of this Amendment. The dates by which the foregoing requirements must be satisfied (the “Required Permit Dates”) may be extended in accordance with the provisions of Section 2 (o).

c. Contract Documents: Alpha shall perform the Work in accordance with the following documents (collectively, the “Contract Documents”):

- i. This Amendment;
- ii. Project Specifications, which specifications are described by the attached Exhibit 3 (the “Project Specifications”);
- iii. Design and construction documents, which shall be prepared by Alpha in accordance with the minimum design guidelines attached as Exhibit 4 and shall be approved by the Department pursuant to Section 2 (g)(i)(d), consisting of horizontal and vertical alignments, cross-sections of the alignment at 100 foot intervals, and rock and cut slope designs (as approved, the “Construction Documents”); and
- iv. The Hawks Nest Mining Permit, to the extent relevant to the design and development of the improvements contemplated by Section 2 (a).

The parties agree that, although the Construction Documents may not be complete or approved by the Department prior to the commencement of Work by Alpha, Alpha shall make all modifications necessary to such Work to conform to all Contract Documents as a condition to payment for and acceptance of such Work with respect to a segment or any section thereof by the Department pursuant to Section 2 (j). In the event of any discrepancy among the Contract Documents, they shall be given precedence in the same order in which they are listed above.

d. Acquisition of Property:

In accordance with this Section 2 (d), Alpha, to accommodate the future development of the Hawks Nest Section, shall cause Paramount to use commercially reasonable efforts to acquire and to donate to the Department, at Alpha's or Paramount's sole cost and expense, general warranty deeds (the "Deed(s)") for the surface and surface only of all parcels within the Hawks Nest Section (the "ROW Area(s)") and declarations restricting future mining activities in coal, clay or clay product and other solid mineral underlying the ROW Area (the "Declaration(s)") as generally delineated by the forms of Agreement to Convey (as defined by Section 2 (d) (vii) (a)), Deed and Declaration annexed to this Amendment as Exhibit 5 and Exhibits A and B thereto, respectively). Such ROW Area acquisition services will also include, at Alpha's or Paramount's sole cost and expense, the relocation of any affected utilities located within the ROW Area, the procurement of all appraisals, plats and appraisal reviews, negotiations with landowners and utility owners, relocation assistance and advisory services, and legal services directly related to property acquisition for the Hawks Nest Section, all as more particularly described in this Section 2 (d). Alpha shall carry out, or cause Paramount to carry out, the performance of such property acquisition and utility relocations as follows, it being understood and agreed that, in all events, Alpha shall remain responsible for the performance of all such obligations:

- i. Alpha shall submit a ROW Area acquisition plan (the "ROW Plan") to the Department for the Department's approval. The ROW Plan shall be consistent with the data submitted at the Hawks Nest Section location public hearing, and shall include the associated plan sheets, and identify the parcels acquired or to be acquired within the ROW Area and required relocations pursuant to Section 2 (d)(ii) ("Complete ROW Plan"). Approval of the ROW Plan shall be a condition precedent to payment to Alpha for any segment pursuant to Section 2 (j). The Department shall respond within thirty (30) days of delivery of the Complete ROW Plan to the Department and shall not otherwise unreasonably withhold or delay its approval of the ROW Plan.
- ii. For acquisitions of ROW Areas after the date of this Amendment, which require the relocation of displaced persons, businesses or nonprofit organizations, Alpha shall submit a relocation plan which plan shall allow for the orderly relocation of displaced persons, if any, based on time frames not less than those provided by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (the "Uniform Act").

- iii. All acquisitions of ROW Areas occurring after the date of this Amendment shall be in accordance with the Department's Right of Way and Utilities Manuals, Vol. I, and all federal and State laws and regulations that may apply to Work described in the Contract Documents.
- iv. Alpha shall make direct payments of benefits and compensation due to the owners of ROW Areas and the grantors under the Declarations for negotiated settlements and relocation benefits, if any, and payments due, if any, to the Department pursuant to Section 2 (d) (viii).
- v. Alpha shall perform an appropriate level of due diligence to determine whether ROW Area may contain Recognized Environmental Conditions as defined by ASTM Standard 1528-00 that might warrant remediation or other forms of corrective action ("Environmental Conditions"). At a minimum, Alpha shall perform an ASTM Standard Practice for Transaction Screen Process (TSP) E-1528-06, ASTM Standard Practice for Environmental Site Assessment: Phase I (ESA) E-1527-05, and/or ASTM Standard Practice for Environmental Site Assessment: Phase II E-1903-97(2002), as appropriate. A single study is acceptable for contiguous ROW Areas. Prior to the initial application for payment for a segment pursuant to Section 2 (j), Alpha shall provide the Department with a copy of all studies and assessments conducted relative to the condition of the ROW Areas within the segment in compliance with the other requirements of this Section 2 (d) (v). Prior to application for payment for a segment, Alpha shall also provide notice to the Department of any additional Environmental Conditions discovered during performance of the Work on that segment, shall remediate or treat all Environmental Conditions reported in any such study or assessment, or discovered during the performance of the Work, to the extent required by and in accordance with all applicable laws and regulations prior to completion of Work on the affected segment, and shall provide documentation to the Department of any such remediation or treatment.
- vi. To accommodate the development of the Hawks Nest Section, Alpha shall assume the lead role in obtaining: (i) the rights, as described in this Section 2(d), to the ROW Areas, and (ii) any Declarations regarding the solid minerals underlying the ROW Areas. In addition, Alpha shall cause such ROW Areas and Declarations to be donated to the Department in accordance with the provisions of Sections 2(d)(vii) and (viii).
- vii. To the extent that Alpha or Paramount, through the use of commercially reasonable efforts, is successful in obtaining ROW Areas for the purpose of developing the Hawks Nest Section, Alpha shall deliver or cause to be delivered to the Department, prior to or at the same time as its submission of the application for payment for each segment (as defined by Section 2 (j)), the following:

(a) an Agreement to Convey and Deliver substantially in the form of Exhibit 5 to this Amendment (“Agreement to Convey”) executed by Paramont, whereby Paramont shall agree to convey, in accordance with the time frame and conditions set forth herein and in the Agreement to Convey, to the Commonwealth title to the ROW Areas of the specific segment of the Hawks Nest Section, which includes whatever of the earth, soil, land and waters which lies above and is superincumbent upon the coal underlying the surface of such ROW Areas, all as shall be more particularly described in the Deed(s) to such ROW Areas. The Deed(s) shall be substantially in the form of Exhibit A to Exhibit 5 to this Amendment and the ROW Area described by such Deed(s) shall be transferred to the Department free and clear of judgment liens, mortgages, deeds of trust, delinquent real property taxes and Alpha Commitments, being those described in Section 2(d)(xiv). Paramont shall also agree, pursuant to the Agreement to Convey, to deliver any obtained Declaration(s), substantially in the form of Exhibit B to Exhibit 5 to this Amendment, with respect to coal, clay or clay product, or other solid mineral, as generally delineated by such form of Declaration within the ROW Areas, for the benefit of the Commonwealth. Alpha acknowledges and agrees that it shall be responsible for Paramont’s performance of its obligations under each Agreement to Convey.

(b) appraisal(s) of ROW Areas and restrictions under the Declarations within the segment by qualified real estate appraisers selected from the Department’s list of qualified appraisers (“Qualified Appraisers”).

(c) a plat, prepared and signed by a land surveyor licensed in the Commonwealth (“Licensed Land Surveyor”), defining the metes and bounds of the relevant ROW Areas and related easements, if any.

(d) copies of any unexecuted Deeds and executed Declarations referenced in Section 2 (d) (vii) (a) obtained by Paramont.

Failure by Alpha to cause the required (i) Agreement to Convey, (ii) appraisal, (iii) plat prepared and signed by a Licensed Land Surveyor or (iv) copies of any unexecuted Deeds and executed Declarations obtained by Alpha and Paramont to be delivered to the Department shall entitle the Department to withhold payment to Alpha for that segment, except as otherwise provided by Section 2 (d) (viii), notwithstanding the parties’ agreement that the conveyance of the ROW Area is being donated by Alpha without additional compensation from the Department. The Department shall also be entitled to withhold payment, unless and until: (i) Environmental Conditions have been remediated as required pursuant to Section 2 (d) (v), and (ii) Alpha has completed utility relocations required pursuant to Section 2 (d) (ix).

viii. If, despite Alpha’s efforts in accordance with Section 2(d)(vii) above, Alpha is unable to reach settlements amicably with property owners for the acquisition of certain ROW Areas or Declarations, as a last resort, the

Department will handle any necessary condemnation proceedings. In the event that the Department is required to initiate condemnation proceedings, Alpha shall prepare and deliver to the Department the appraisals from Qualified Appraisers with respect to the affected ROW Areas or the restrictions on the underlying coal, clay or clay product, or other solid mineral within the boundaries of the ROW Areas as contemplated by the Declarations. In the event that Alpha is ready to deliver to the Department an application for payment for a segment, but it has not yet conveyed the documentation to any portion of the ROW Areas within that segment, in accordance with Section 2 (d)(vii) (a) above, then in lieu of such documentation, at the time Alpha delivers the application for payment for that segment to the Department: (a) Alpha shall have prepared and delivered to the Department, with such application for payment, all related appraisals with respect to the unacquired: (i) ROW Areas specific to the segment, and/or (ii) restrictions contemplated by the Declarations specific to the segment, required for the Department's condemnation proceeding; and (b) the Department shall deduct from the payment otherwise due to Alpha pursuant to Section 2 (j) the sum of 200% of the appraised value of the unacquired: (i) ROW Area specific to the segment, and/or (ii) restrictions contemplated by the Declarations specific to the segment, plus \$50,000 to be used to cover condemnation administration costs, which sum shall constitute Alpha's donation to the Department in lieu of a donation of the ROW Area and Declarations for the segment.

- ix. Alpha has caused the relocation, within the ROW Areas, of all known utilities necessary to accommodate the development of the Hawks Nest Section. In the event additional utilities are discovered during the course of the Work, Alpha shall cause those utilities to be relocated as approved by the Department.
- x. Subsequent to the execution of an Agreement to Convey, pursuant to Section 2(d)(vii) of this Amendment, and prior to the Commonwealth's acceptance of the relevant Deed(s) tendered in accordance with the terms thereof, Alpha shall maintain (or cause to be maintained) the property in substantially the same condition as exists as of the date of the Department's acceptance of and payment for the segment pursuant to Section 2 (j) and shall repair any damage that Alpha, Paramount or their affiliates, agents or contractors cause so that it continues to be in compliance with the Contract Documents.
- xi. If it elects to do so, the Department shall be entitled, prior to the Commonwealth's acceptance of any Deed tendered pursuant to conditions set forth in Section 2 (d) (vii), to: (i) update title reports obtained by the Department for the ROW Areas, (ii) update any environmental assessments or studies provided by Alpha, pursuant to Section 2(d)(v) of this Amendment, of such ROW Areas and (iii) review the condition of the completed segments accepted by the Department.

(a) To facilitate the Department's ability to update such reports, Alpha shall provide (or cause Paramount to provide) the Department written notice: (i) of Paramount's submission to DMME of its application for final bond release for the Hawks Nest Mining Permit ("Bond Release Application Notice"), and (ii) when it receives notification from DMME of imminent final release of such bond ("Imminent Bond Release Notice"). Within sixty (60) days of the Department's receipt of the Bond Release Application Notice or within thirty (30) days of its receipt of the Imminent Bond Release Notice, whichever occurs first, the Department shall notify Alpha if it determines that: (A) either, or both of, the environmental conditions ("Environmental Notice") or title conditions ("Title Notice"), for any ROW Area are no longer in compliance when compared to the initial reports, assessments, or Contract Documents provided to or obtained by the Department for the ROW Areas within the Hawks Nest Section; or (B) the condition of a completed segment or portion thereof ("Condition Notice") is no longer consistent with the conditions as it was at the time of the Department's acceptance of the segment and, as a consequence, is no longer in compliance with the Contract Documents.

(b) The Department shall immediately accept all Deeds and Declarations for all ROW Areas within the Hawks Nest Section for which it has not provided an Environmental Notice, Title Notice or Condition Notice to Alpha. For any ROW Area for which the Department has issued a Title Notice, Alpha shall promptly remedy or indemnify the Department for any such claims of non-compliance, at its sole cost and expense, in accordance with the terms and conditions of Section 2(d)(vii)(a) and the Department shall accept the Deed for that ROW Area and related Declaration(s) within five (5) days after Alpha provides to the Department documentation of the remedy or indemnification reasonably satisfactory to the Department for such claims. For any ROW Area for which the Department has issued an Environmental Notice, Alpha shall promptly correct the noncompliance, at its sole cost and expense, in accordance with all applicable laws and regulations and the Department shall accept the Deed and Declaration(s) no more than ten (10) days after Alpha provides documentation to the Department of any remediation or treatment required by and in accordance with such laws and regulations. For any ROW Area for which the Department has issued a Condition Notice, Alpha shall promptly correct the non-compliance, at its sole cost and expense, and, upon completion of such correction, provide the Department with written notice that the non-compliance has been corrected. The Department, within ten days (10) days of receiving such notice, shall inspect the corrected non-compliance and provide Alpha written notice of its concurrence or non-concurrence as to whether the non-compliance has been corrected. The Department shall accept the Deed and Declaration(s) no more than five (5) days after providing Alpha with notice of such concurrence.

(c) If Alpha is unable to provide the Department with an Imminent Bond Release Notice within one-hundred and eighty (180) days of its Bond Release Application Notice, Alpha, to facilitate the Department's

ability to again update such reports and review the condition of the completed segments, shall re-notice (or cause Paramount to re-notice) the Department by providing, when it receives notification from DMME of imminent final bond release, the Department with the Imminent Bond Release Notice. Immediately after receiving such notice, the Department and Alpha shall proceed under the provisions of Section 2(d)(xi)(a) and (b) of this Amendment to complete the Deed and Declaration acceptance process except that the Department shall have thirty (30) days from its receipt of Imminent Bond Release Notice to provide any Environmental Notice, Title Notice or Condition Notice.

xii. On or before October 31, 2012 (the "Final Delivery Date") or within ten (10) days after final bond release, whichever is earlier, Alpha shall convey and deliver or cause Paramount to convey and deliver, in the condition required by this Amendment, the Deeds and related Declarations, obtained as required pursuant to conditions set forth in this Section 2 (d) for the ROW Areas within the Hawks Nest Section. Upon the Department's acceptance of the Deeds and Declarations, possession of the ROW Area will pass to the Department and the Department shall have exclusive possession, control and unrestricted rights of use of such ROW Areas, including rights to conduct pre-construction and construction activities on the property. However, in the event Alpha is unable to make such delivery by the Final Delivery Date because of regulatory agency action or inaction beyond Alpha's control, the Final Delivery Date shall be extended as appropriate, but under no circumstances shall the Final Delivery Date be extended beyond October 31, 2015. If the Final Delivery Date is extended, the Department and Alpha shall work collaboratively and in good faith to resolve such regulatory agency action or inaction or to pursue other means of providing the Department with the Deeds and Declarations. In the event that Alpha does not cause the conveyance and delivery of the Deeds and Declarations by October 31, 2015, it shall be considered an Event of Default by Alpha pursuant to Section 7 of this Amendment.

xiii. In the event any entity that executed a Declaration delivered to the Department by Alpha makes application for a mining permit and the Department believes it needs additional protection for identified structures, the Department shall agree to discuss and to attempt to resolve its issues, in good faith, concerning such additional protection, with such entity in advance of the Department's deadline to respond to the regulatory agencies, provided that such entity provides information requested by the Department related to the proposed permit, which is reasonably necessary or convenient for the Department to assess and determine whether the subsidence control plan provides adequate protection to such structures.

xiv. Alpha will not allow, and it shall cause Paramount to not allow, any additional easements or liens, except those that may arise from eminent domain powers exercised by governmental entities, relating to the ROW Areas (collectively, "Alpha Commitments"), from the date of the applicable Agreement to Convey and continuing until such time as the relevant Deeds

are conveyed to the Department.

xv. Following Alpha's submission of an application for payment for a segment pursuant to Section 2(d)(vii) and until delivery of the Deeds pursuant to the relevant Agreement to Convey, Alpha shall not allow any solid mineral mining activities or operations that are inconsistent with the covenants and restrictions set forth in any Declaration to be delivered pursuant to the terms of such Agreement to Convey.

e. Resources Commitment: Alpha shall furnish to the Department, at Alpha's own cost and expense, all necessary materials, labor, tools, equipment, and expertise, including engineering, to develop and complete its Hawks Nest Mining operations, including the Hawks Nest Section, in accordance with the Contract Documents (collectively, the "Work"). Alpha reserves the right to sub-contract for services, labor, equipment, tools, and expertise to perform the Work or to otherwise develop the Hawks Nest Section, but shall remain directly responsible for the performance of all Work.

f. Compliance and Indemnity:

i. Alpha: (a) shall comply with the terms and conditions of Required Permits (including, without limitation, the Hawks Nest Mining Permit and other approvals related thereto), the laws of the Commonwealth, and to all other applicable laws whether or not mentioned or specified herein, during its mining operations and the performance of the Work for the development of the Hawks Nest Section; provided, however, violations of Required Permits, which do not materially interfere with the Work or otherwise result in an Event of Default, shall not constitute an Event of Default under this Amendment so long as Alpha is diligently undertaking to cure such violations; and (b) shall maintain (or cause to be maintained) insurance coverage as described by Exhibit 7 to this Amendment.

ii. Alpha shall indemnify, protect, defend, hold harmless and release the Commonwealth, the Department, the Commonwealth Transportation Commissioner, the Commonwealth Transportation Board, and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them (each a "State Indemnitee") from and against: (a) all third party claims arising from the unlawful acts, omissions, negligence or willful misconduct of Alpha, its affiliates, employees, subcontractors or their employees as a result of, or in connection with, their presence or activities or the Work to be performed by them on Hawks Nest Section, excluding the portion of liability that is attributable to the unlawful acts or omissions, negligence or willful misconduct of a State Indemnitee; (b) any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued, excluding any suit, claim or proceeding based on infringement or violation of a patent or

copyright, relating solely to a particular process or product of a particular manufacturer specified by Department and not offered or recommended by Alpha to Department; and (c) provided that the Department is not in breach of its contractual obligation to make payments to Alpha for the Work, all claims or mechanic's liens brought against any State Indemnitee or against the project as a result of the failure of Alpha, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. The provisions of this Section 2(f) (ii) shall survive the expiration or termination of this Amendment for any reason and shall expressly extend to and include the period following the Department's acquisition of title to the ROW Areas pursuant to the Agreements to Convey.

g. Design and Development Activities: In prosecuting the Work under this Amendment, as part of the Hawks Nest Mining Permit and in accordance with the Contract Documents, Alpha shall return the mined areas within the ROW Areas to a rough-grade roadbed configuration suitable for the future development of a four-lane roadway and will incorporate such configuration into Alpha's ongoing mining activities and the Hawks Nest Mining Permit. The Work includes all activities, materials and services necessary to design and develop such rough grade roadbed, including, without limitation, the following described design and development activities:

i. Engineering and Design Development:

(a) Alpha shall provide, at its own expense, project engineering and project engineering management. The project engineering category includes all engineering and technical tasks required to prepare the Hawks Nest Section for development of the rough-grade roadbed. The project engineering management category includes the engineering and coordination tasks to facilitate the process during the design, mining phases, and completion of the roadbed development. Alpha shall provide through qualified, licensed design professionals employed by Alpha, or procured from qualified, independent licensed design consultants, the necessary design services, including engineering, surveying, and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Alpha to complete the Work consistent with the Contract Documents. All design professional services related to the Work shall be supervised and sealed by professionals properly licensed in the Commonwealth. The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Work. Notwithstanding the preceding sentence, if the Contract Documents establish a specific performance standard for any aspect of the Work, the design professional services shall be performed to achieve such standards.

(b) Alpha shall provide the Department with copies of all permit revisions, authorizations, or issuances that relate to the Hawks Nest Section. No reimbursements for any segment will be paid to Alpha unless the applications for payment for such segments are accompanied by an as-built survey of the segment completed by a Licensed Land Surveyor.

(c) Alpha has provided to the Department an initial schedule (the "Schedule") of the dates on which the allocable portions of the Contract Price are anticipated to accrue consistent with the requirements of Section 2 (j), a copy of which is attached as Exhibit 8, and agrees to provide the Department with a revised Schedule, upon the Department's request, in the event of substantial changes in the anticipated payments or payment dates then shown.

(d) Alpha shall submit to the Department, on date or dates established by the monthly meetings pursuant to Section 2 (i) (iii), ten (10) sets of preliminary Construction Documents setting forth in detail drawings and specifications describing the requirements for the Work, in full compliance with the Contract Documents, all applicable laws and Required Permits, for the review and approval of the Department and, if necessary, the concurrence of the FHWA. Department shall endeavor to provide timely reviews and (where required by the Department) approvals of submittals, interim design submissions and Construction Documents consistent with the turnaround times established by the monthly meetings or, unless stated otherwise in the Contract Documents, twenty-one (21) days after receipt of such submissions. Alpha's failure to submit and obtain the Department's approval of all Construction Documents within six (6) months after the execution of this Amendment shall constitute an Event of Default by Alpha. Alpha shall proceed with the Work in accordance with the approved Construction Documents and shall submit ten (10) sets of approved Construction Documents to the Department within ten (10) days after receipt of the Department's approval of such Construction Documents. Department's review, comment and/or approval of design submissions and the Construction Documents are for the purpose of establishing Alpha's compliance with the requirements of the Contract Documents and mutually establishing a conforming set of Construction Documents compatible with the requirements of the Work. Department's review, comment and/or approval of any interim or final design submission (including but not limited to the Construction Documents) shall not be deemed to transfer any liability from Alpha to the Department.

(e) Alpha, if additional information is necessary, will provide the Department's Project Manager with such information as is reasonably necessary to develop reports required of the Department Project Manager by the Department.

ii. Permitting: As provided by Section 2 (b), Alpha shall be responsible for securing all Required Permits. In addition, Alpha shall be responsible for

maintaining, obtaining necessary revisions to, and complying with the Required Permits, including mining permits and other mining approvals, necessary to accommodate the development of the rough-grade roadbed as a post-mining land use in accordance with the Contract Documents and obtaining Final Completion.

iii. Development Activities: Alpha shall provide, at its own expense, the following development activities and services, all in accordance with the Contract Documents:

(a) Excavation, blasting, pre-splitting if any, and material placement necessary to achieve roadbed rough-grade and slope stability.

(b) Clearing and grubbing activities necessary to develop the rough-grade roadbed within the ROW Areas.

(c) Seeding and mulching of project area in accordance with the Hawks Nest Mining Permit's approved revegetation plan.

(d) Drainage controls and erosion and sediment control structures designed in accordance with the performance standards authorized by the Hawks Nest Mining Permit and National Pollution Discharge Elimination System authorization. In conjunction with the development of the rough-grade roadbed, Alpha will work with the Department to develop preliminary roadway design plans sufficient to determine the required storage volume and location of any proposed permanent stormwater management basins, consistent with current Virginia Department of Conservation and Recreation's *Virginia Erosion and Sediment Control Handbook*. After agreement upon the location and size of the stormwater management basins with the Department's Project Manager, Alpha will systematically construct the identified basins to rough grade as a part of the roadbed development and its mining operations.

(e) Mitigation requirements in accordance with the Required Permits.

(f) Mobilization and demobilization of equipment.

h. Project Duration: Alpha shall initiate Work on the development of the roadbed immediately after execution of this Amendment and will continue such Work as a part of the ongoing mining activities with final completion and acceptance by the Department of the entirety of the rough-grade roadbed in accordance with the requirements of this Amendment ("Final Completion") occurring no later than November 30, 2010 (the "Final Completion Date", as it may be extended pursuant to Section 2 (o)). Final Completion shall be deemed to occur upon the Department's acceptance of the last segment and the Work as complete in its entirety, in accordance with Section 2 (j) (i). If Final Completion is not attained by the Final Completion Date, Alpha will pay the Department the per diem dollar amount of \$2,000, as liquidated damages for each day that actual Final Completion extends

beyond the Final Completion Date.

The parties acknowledge, recognize and agree on the following: (a) because of the unique nature of the Work, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Department as a result of Alpha's failure to complete the Work on or before the Final Completion Date; (b) any sums which would be payable under this Section 2 (h) are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and (c) any sums payable under this Section 2 (h) shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by the Department which are occasioned by any delay in achieving the Final Completion Date. Notwithstanding the above, liquidated damages are not intended to excuse Alpha from liability for any other breach of its obligations under this Amendment.

i. Monitoring:

i. The Department, at its expense, may provide on-site construction specialists and inspectors to monitor Alpha's mining activities relating to the development of the Hawks Nest Section (including but not limited to compaction testing for material placement as part of the mining activities) and materials supplied with respect to the Hawks Nest Section. In addition, the Department may provide onsite construction specialists and inspectors to inspect the components of the Project Specifications, Exhibit 3. The Department and its consultants shall have reasonable access to all areas of the Hawks Nest Section, including but not limited to ROW Areas, borrow areas and any area within the permitted mining operations that is contributing to development of the rough grade roadbed. Alpha shall provide the Department with such reasonable access, information and assistance as the Department requires for observation, inspection and monitoring as specified above.

ii. If the Department believes that the Work is not in conformance with the Contract Documents, the Department's Project Manager shall immediately notify Alpha's Project Manager and they shall then confer regarding the nonconformity in question as soon as practical. If the parties agree that the nonconformity exists and warrants correction, then Alpha shall take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work, at Alpha's sole cost and expense. The Department's failure to provide notice of non-conforming Work shall not constitute a waiver of the Department's rights relative to such Work pursuant to the Contract Documents. In the event that Alpha and the Department disagree on the existence or scope of such non-compliance or remedial action required pursuant to the Required Permits, either of them may forward the issue to the permitting agency for consideration. During any dispute resolution, under no

circumstances shall Alpha be required to curtail its mining operations in the Hawks Nest Section pursuant to the mining permit. If the dispute resolution is pertinent to the Project Specifications, the Department's Project Manager may require Alpha to cease the affected Work, and resort to the process as more specifically provided in Section 8 of this Amendment.

iii. Alpha shall provide the Department's Project Manager with information necessary to assist the Department's specialist in the preparation of any reports or as required by the Department. The Department shall prepare project reports and daily logs in accordance with the Department's oversight plan, which is attached as Exhibit 9, and provide Alpha's Project Manager with a copy of such project reports and daily logs. In addition, representatives of Alpha familiar with the Work, including Alpha's Project Manager and, if requested by the Department, Alpha's design and/or geotechnical consultants shall meet with representatives of the Department, including the Department's Project Manager, on a monthly basis, unless otherwise coordinated by each party. Such meetings will be held at the Work site and at a time designated by the Department and reasonably acceptable to Alpha's Project Manager. During these meetings, Alpha's representatives shall present information relevant to the Work during the previous month and any pertinent information on Work planned for the upcoming month. The purpose of the meetings will be to identify progress being made on the development of the Work and to allow the Department to schedule the proper resources to administer and monitor the progress of the Work. The Department shall provide minutes of the meetings, if required, within five (5) business days after the monthly meeting.

j. Contract Price:

i. The Department shall pay Alpha a fixed lump sum of Ten Million Dollars (\$10,000,000) (the "Contract Price") for its performance of the Work in accordance with the Contract Documents and this Section 2. Payment of the Contract Price to Alpha by the Department shall accrue and be allocable in accordance with the Schedule, as defined in Section 2(g)(i)(c) and in accordance with Exhibit 8 hereto, as may be amended from time to time pursuant to this Amendment, and subject to compliance with the other terms of this Section 2, generally, as follows: (1) One Million Five Hundred Thousand Dollars (\$1,500,000) for the development and implementation of design and construction plans, development and pursuit of permit revisions, and other ancillary work necessary, including engineering, for the development of the rough-grade roadbed as described in Section 2(e) above, shall be paid by the Department to Alpha during the first six months from the date of execution of this Amendment, in six equal installments of \$250,000 per month, following Alpha's submission of an application for payment to the Department on the first day of each month following the execution of this Amendment in accordance with Section 2 (j) (iii); provided, however, that the last such installment shall not accrue or be payable unless and until Alpha has received

final approval of the Construction Documents from the Department pursuant to Section 2 (g)(i)(d) and has submitted all necessary applications for revisions of Required Permits for the Work in accordance with Section 2 (b); and (2) the remaining Eight Million Five Hundred Thousand Dollars (\$8,500,000) for roadbed development to rough-grade, shall be allocable and accrue in five equal installments of One Million Seven Hundred Thousand Dollars (\$1,700,000) for each segment, with the first four segments being approximately 0.25 miles each and the last segment consisting of the remainder of the Hawks Nest Section (or approximately 0.30 miles), measured by distance between stations as shown on Attachment A (individually, a "segment", and collectively, the "segments"), following Alpha's satisfaction of the requirements of Section 2 (j) (ii) and its submission of an application for payment to the Department in accordance with Section 2 (j) (iii). However, notwithstanding anything herein to the contrary, if either (A) the issuance of a \$5 million TPOF grant for FY09 to the Department for the Work is not approved or (B) the condition concerning FHWA approval relating to federal funding is not waived by such FY09 TPOF grant, and the Department fails to identify another source of funding for the Work, then the parties' respective rights and obligations under this Agreement shall be confined to the development and delivery to the Commonwealth of only sixty-five one-hundredths (0.65) contiguous miles of rough-grade roadbed, in accordance with the provisions of Section 2 (d) (vii), notwithstanding any segments of roadbed that may be donated, and neither the Department nor Alpha shall not be deemed in default under this Amendment for failure to pay or perform obligations with respect to Work in excess of such reduced roadbed. In the event of the reduction of the roadbed that is subject to this Amendment, as provided by the immediately preceding sentence, then the segments shall be reduced to three in number, the third segment shall be for approximately 0.15 miles, and the payment due for each segment shall be adjusted such that the total remaining payments are approximately equal and do not exceed \$3,500,000 in the aggregate.

- ii. Alpha shall notify Department: (1) when it believes the Work with respect to a segment other than the last segment is substantially complete (such notice being referred to as an "interim notice"); and (2) when it believes that the last segment and the Work in its entirety has obtained Final Completion (such notice being referred to as a "final completion notice"). Each such notice shall include an as-built survey of the completed segment by station to station and documentation that verifies that the segment, as then developed, is in compliance with all Required Permits. With the final completion notice, Alpha shall also include an as-built survey for the entire Hawks Nest Section. All such surveys shall be submitted in hard copy and electronic format.

(a) Within seven (7) days of Department's receipt of an interim notice, the Department and Alpha will jointly inspect such Work to verify that it is

substantially complete in accordance with the requirements of the Contract Documents.

(b) In the case of the last segment and acceptance of the Work in its entirety as having obtained Final Completion, Alpha shall deliver to the Department, with the final completion notice, a proposed final application for payment and a survey. Within fifteen (15) days following its receipt of such final completion notice and the other required documents, the Department and Alpha will jointly inspect the Work to verify that it is complete in accordance with the requirements of the Contract Documents and to compare the as-built configuration with the Contract Documents.

(c) Within fifteen (15) days of the Department's review of the Work (whether on a segment or all of the segments and the Work in its entirety on Final Completion) in accordance with this Section 2 (j) (ii), the Department shall either concur that the Work conforms to the Contract Documents or find that the Work is not in compliance. The Department shall provide its determination to Alpha in writing. Any agreed-upon non-compliance shall be promptly corrected by and at the expense of Alpha. In the event that Alpha and the Department are unable to agree on the existence or scope of non-compliance or remedial action required, if any, resolution shall be in accordance with Section 8 of this Amendment.

(d) Alpha shall not be entitled to submit an application for payment with respect to the Work completed for a segment, unless and until the Department determines pursuant to the provisions of this Section 2 (j) (ii) that Alpha has completed the Work in conformance with the Contract Documents, and (i) Alpha has submitted to the Department executed Agreements to Convey in accordance with the conditions set forth in Section 2 (d) (vii) of this Amendment, or (ii) if Alpha is unable to comply with Section 2 (d) (vii) of this Amendment, Alpha has submitted to the Department documentation required in accordance with the conditions set forth in Section 2 (d) (viii) of this Amendment.

iii. In accordance with (and no sooner than provided by) the Schedule and upon satisfaction of the conditions applicable to completion of the Work in accordance with subsections (i) and (ii) above and the other provisions of this Amendment, Alpha shall submit to the Department applications for payment for the Department's review and approval, requesting payment for Work performed and accompanied by all supporting documentation required by the Contract Documents. Each application for payment shall constitute Alpha's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the application, that title to all Work will pass to the Department free and clear of all claims, liens, and security interests, including mechanic's and materialmen's liens, affecting the Work performed by or on behalf of Alpha (except as otherwise permitted by

Section 2 (d)). Payment with respect to any segment shall not be due unless and until the requirements of Section 2 (d) (vii) and/or (viii) are fulfilled to the Department's satisfaction. In addition, at the time of submission of its application for payment for the last segment, Alpha shall provide the following additional information: (a) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work performed by or on behalf of Alpha (except as otherwise permitted by Section 2 (d)) which will in any way affect Department's interests; (b) a general release executed by Alpha waiving, upon receipt of final payment by Alpha, all claims, except those claims previously made in writing to the Department and remaining unsettled at the time of final payment, which claims shall be specifically listed in an attachment to the general release; and (c) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. The Department shall make payment within thirty (30) days after the Department's receipt of each properly submitted and accurate application for payment in compliance with Section 2.2-4347 *et seq.* of the Code of Virginia, less any deduction permitted by Section 2 (d)(viii). Consistent with the general purpose of Section 2.2-4354 of the Code of Virginia (upon receipt of payment by the Department), Alpha shall promptly pay all amounts due to its subcontractors, or shall notify the Department and subcontractors of amounts withheld for good cause. Alpha shall also submit to the Department, with each application for payment, an affidavit signed by an officer of Alpha, to the effect that as of the prior application of payment Alpha has paid or will pay within thirty (30) days of receipt of payment from the Department all amounts due, except for amounts withheld for good cause, to its subcontractors and, to its knowledge, its subcontractors have paid their subcontractors, with respect to all Work then performed under this Amendment.

k. Warranty.

- i. Alpha warrants to the Department that the Work, including all materials and equipment furnished as part of its Work, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Alpha's warranty obligation excludes defects caused by abuse, damage, alterations, or failure to maintain the work by persons other than Alpha or anyone for whose acts Alpha may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Department with greater warranty rights than set forth in this Section 2 (k) or the Contract Documents. Alpha will provide the Department with all manufacturers' warranties, if any, upon Final Completion.

ii. Subject to the terms of this Section 2 (k) (ii), Alpha agrees to correct any Work that is found by the Department to not be in conformance with the Contract Documents within a period of one (1) year from the date that final bond release is received with respect to all of the ROW Areas within the Hawks Nest Section. However, Alpha's obligation to correct the Work shall be extended for an additional one (1) year period with respect to any such Work (the location of which shall be identified by station reference) that is found to be defective within the initial warranty period set forth above, which additional one (1) year period shall commence upon the completion of such correction of the defective Work in the identified area. Within seven (7) days of receipt of written notice from Department that the Work is not in conformance with the Contract Documents, Alpha shall meet with the Department to develop a remediation plan that includes a timeline for correction of the defect that is approved by the Department. Alpha shall then proceed to correct the defect in accordance with the remediation plan. In the event that Alpha and the Department disagree on the existence or scope of non-compliance or remedial action required, if any, resolution shall be in accordance with Section 8 of this Amendment. The one (1) year period referenced in this Section 2 (k)(ii) applies only to Alpha's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Department may have regarding Alpha's other obligations under the Contract Documents.

I. Safety. Alpha recognizes the importance of performing the Work in a safe manner so as to minimize the potential for damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-site at the Hawks Nest Section; and (iii) all other property located on-site at the Hawks Nest Section. Alpha assumes responsibility for implementing and monitoring appropriate safety precautions and programs related to the performance of the Work. As a part of Alpha's ongoing efforts to conduct its mining operation in a safe manner and provide a safe workplace, Alpha's Mine Superintendent and on-site Mine Foremen each are designated as a Safety Representative for the Hawks Nest mining operation which includes the Hawks Nest Section. Each such designee has the necessary qualifications and experience to supervise the implementation and monitoring of Alpha's safety policies, precautions, and plans related to the Work. Unless otherwise required by this Amendment, each Safety Representative is an individual stationed at the Work site who may have responsibilities in addition to safety. A Safety Representative shall, every working shift, make routine inspections of the site and make a written record of the inspection and findings. The Hawks Nest mining operation works 24 hours a day, seven days a week; its crews generally work cycles of four days or nights (12 hour shifts) followed by four days or nights off. Upon a crew's return from the off-cycle, a Safety Representative conducts safety meetings with the crew prior to resuming work. The Safety Representative documents the crew members present and the topic(s) of the safety meeting and will provide a copy

of such documentation to the Department. In addition, Alpha shall provide the Department with copies of the existing Lovers Gap No. 3 Surface Mine's Training Plan ("Training Plan"), of which the Hawks Nest mining operation is a part, and which was submitted to the Mine Safety and Health Administration ("MSHA") and approved in January 2003. Alpha shall operate its mining operations at the Hawks Nest Section in a safe manner and in accordance with: (i) safety requirements as prescribed by MSHA's and Virginia's Division of Mines' ("VDM") regulatory requirements; (ii) Alpha's safety policies ("Safety Policies") and MSHA Training Plan, as in effect as of the date of this Amendment, copies of which were provided to the Department on June 2, 2008. Alpha will, upon occurrence, provide the Department's Project Manager with copies of any reports required by regulatory agencies and/or Alpha's safety policy relating to any safety-related injury, loss, damage or accident arising from the Hawks Nest Section Work.

The Department will require its authorized representatives and authorized agents to comply with Alpha's Safety Policies and Training Plan and to complete any training required by Alpha, VDM and/or MSHA prior to and during the time period Work is ongoing at the Hawks Nest Section.

m. Performance Security. Paramont's existing performance bond issued in favor of DMME for the Hawks Nest Mining operation is \$5,244,000, as of the date of this Amendment. The purpose of the bond is to provide financial assurances that: (i) the permitted area will be reclaimed in accordance with its approved PMLU as then in effect, (ii) the mining areas will be backfilled and regraded to the configuration, in the Hawks Nest Section, of a rough-grade roadbed after revision of the Hawks Nest Mining Permit, and (iii) all other performance standards and permit conditions are met. After the Hawks Nest Mining Permit is revised to incorporate the development of a roadbed configuration, Paramont's performance bond will not be released until such configuration is approved by the Department and DMME and final bond release is achieved. In the event that the DMME bond falls below \$1,000,000 for any reason prior to the expiration of Alpha's warranty obligations pursuant to this Amendment, then Alpha shall obtain a letter of credit (or other security acceptable to the Department), in favor of the Department, in an amount equal to the difference between \$1,000,000 and the then principal amount of the DMME bond, to secure the performance of Alpha's warranty obligations. Such letter of credit shall be in form and substance acceptable to the Department and shall remain in place and renewed until the expiration of Alpha's warranty obligations under this Amendment.

n. Unforeseen Conditions or Events. The occurrence of conditions or events, whether or not foreseen or foreseeable, shall not affect or diminish in any respect Alpha's obligations under this Section 2, except to the extent otherwise expressly provided by Section 2 (o) of this Amendment, it being understood and agreed that: (1) the compensation provided by Section 2 (j) is intended to compensate Alpha in full and timely for performance of all of its obligations under this Amendment and for its assumption of all such risks, including, but not limited to, force majeure events or the discovery of differing site conditions or hazardous substances that might affect performance of the Work; and (2) at the date of the execution of this Amendment,

Alpha has a full understanding of the scope of the Work and the conditions actually or potentially affecting the Work and has taken such matters into full account in establishing the compensation payable to it under this Amendment.

o. Delay Events.

i. For the purposes of this Amendment, the term “Delay Event” means any of the following events (provided such events are beyond the control of Alpha and are not due to the negligence or misconduct, or any act or omission of Alpha or any of its affiliates, or any of their respective agents, officers, directors, employees, contractors, subcontractors, suppliers, materialmen, or representatives, any of them being referred to in this Amendment as an “Alpha Party”), which materially and adversely affects the Work or Alpha’s performance of its obligations under this Amendment and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by Alpha:

(a) any hurricane force wind, flood in excess of the base flood having a one percent chance of being exceeded in any given year, tornado or earthquake that causes ground motions in excess of current AASHTO bridge design standards for the site;

(b) any epidemic, blockade, war, riot, act of terror or other public disorder;

(c) any industry-wide or regional strike, labor dispute, or stop-work order or injunction issued by a governmental authority (other than the Department in the exercise of its lawful authority under the laws of the Commonwealth) or court having competent jurisdiction;

(d) any discriminatory change in any laws, regulations or ordinances of the Commonwealth, that has a discriminatory, material adverse effect on Alpha’s performance of its obligations under this Amendment or the Work, except where such change is in response to any act or omission on the part of Alpha or an Alpha Party that is illegal or such change is otherwise permitted by this Amendment; or

(e) if caused by a regulatory agency or a change in any laws, regulations, ordinances or authorizations, the delay, suspension, interruption, initial denial or failure to obtain revision or non-renewal of any Required Permit which is necessary for the performance of the Work.

The term “Delay Event” shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered force majeure or a delay event:

- (i) fire or other physical destruction or damage, including drought, rain, storm or action of the elements or other acts of God not listed in items (a) through (e) above;
- (ii) explosion, malicious or other acts or similar occurrence;
- (iii) strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence directed solely at Alpha or the project or an Alpha Party;
- (iv) the presence at, near or on the Hawks Nest Section of any hazardous substance;
- (v) the presence at, near or on the Hawks Nest Section of any archaeological, paleontological or cultural resource or endangered species;
- (vi) the suspension, termination, interruption, denial or failure to obtain revision or non-renewal of any Required Permit, which is necessary for the performance of the Work due to the negligence, misconduct, act or omission on the part of Alpha or an Alpha Party;
- (vii) a change in any laws, regulations and ordinances (such as increases in tax rates) which causes an increase in amounts payable by Alpha but which does not change the obligations to be performed by Alpha hereunder; and
- (viii) any cost risk (including cost of delay) for which coverage is to be provided through insurance required hereunder.

ii. Upon the occurrence of a Delay Event, Alpha may request that the Department grant an extension of the Final Completion Date or the Required Permit Dates, subject to the following conditions: (1) Alpha shall deliver notice to the Department within ten (10) days after Alpha knows or should have known of the Delay Event giving rise to the request for time extension (failure to give such notice will result in a waiver of any and all relief with respect to a time extension pursuant to this Section); (2) such notice shall provide a reasonably detailed narrative defining how the Delay Event impacted the critical activities of the Work and is outside the reasonable control of Alpha; (3) Alpha's performance would not have been concurrently delayed or interrupted by any event other than those identified hereunder; (4) Alpha, in view of all the circumstances, has exercised reasonable efforts to avoid and did not cause the Delay Event; and (5) Alpha has materially complied with the requirements of this Amendment. The extensions, if granted, and which shall not be unreasonably withheld, shall be no longer than the number of days during which the Delay Event prevented Alpha's performance in accordance with this Amendment, and in no event shall the extensions allow for Final Completion

later than October 31, 2012. Delays of subcontractors shall be deemed to be within the reasonable control of Alpha, unless such delays are themselves excusable in accordance with the Delay Event.

3. Pioneer's Rockhouse Section:

The Department currently is re-evaluating a portion of the Environmental Impact Statement ("EIS") for the CFX that traverses the ongoing mining operations in the Rockhouse mining area (the "Rockhouse Section"). Additionally, the Department is conducting additional mineral specialist studies to determine the value of the proposal submitted by Pioneer. In the event that such re-evaluation results in a determination by the FHWA that no additional environmental review is required and VDOT completes its mineral specialist review, then within 45 days thereafter, the Department, Alpha and Pioneer shall enter into the good faith negotiation of a further agreement among Pioneer, Alpha and the Department, for the development to rough-grade of a section of four-lane roadbed in the Rockhouse Section by Pioneer that will be of sufficient width to accommodate the future development of a four-lane roadway which may include designed medians, shoulders, and highway drainage systems, as part of the ongoing mining operations in the Rockhouse Section. It is further anticipated that the Rockhouse Section shall be undertaken as part of a permitted mining operation and all work, including such rough-grade roadbed development, shall comply with terms and conditions of the mining permit, which shall be revised to accommodate the development of the roadbed configuration as part of the mining process, and other terms and conditions to be agreed upon. Neither Contractors nor the Department is legally bound by the provisions of this Section 3, it being expressly understood that failure to obtain a mutually acceptable agreement shall not constitute a default by either Contractors or the Department.

4. Work Product: "Work Product" means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of either Contractor and in any way related to the Work including but not limited to the Construction Documents and expressly excluding documents and information mutually agreed to in writing by the Contractor and Department. The Department shall be the owner of all Work Product. The Department recognizes that certain Work Product and certain other documents of which the Department obtains a copy may contain information exempt from public disclosure under Section 2.2-3705.6.11 of the Code of Virginia (1950) as amended. Should any such records become the subject of a request for public disclosure, the Department shall comply with applicable law.

5. Record Maintenance and Retention of Records: Alpha shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, for its mining operations. In addition, Alpha shall keep (a) full and detailed records as required by and in accordance with its mining permits for the Hawks Nest Section; and (b) invoices and survey records as described in the Section 2(j) above (collectively "Records"). During the performance of the Work and for a period of three (3) years after final payment hereunder,

Department and Department's accountants shall be afforded access from time-to-time, upon reasonable notice only, to review such Records that relate to Alpha's invoices for the Work invoiced in Section 2(j) above.

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

7. Default:

- a. The term, for purposes of this Amendment, "Event of Default" shall mean the failure of the Department, Alpha, or Pioneer to materially fulfill its respective individual obligations described in this Amendment.
- b. Default Resolution: In the case of an Event of Default by a party to this Amendment, the defaulting party, upon receipt of written notification from the non-defaulting party, will have ten (10) days to cure any breach resulting in such Event of Default. If breach cannot be cured in ten (10) days because of circumstances beyond the control of the defaulting party, an additional period of time may be allowed as may be reasonably necessary to cure the breach as may be agreed by the parties. If the party receiving notice of an Event of Default disagrees that a default has occurred, the party claiming default shall be allowed to submit the matter for dispute resolution pursuant to Section 8 herein. If the parties cannot resolve such matter through the dispute resolution procedures of Section 8 (a) (i) through (iii), the non-defaulting party shall be entitled to pursue all available legal and equitable remedies as provided by Section 8 (a) (iv), subject to the limitations set forth in Section 7 (c), and the party claiming default shall have the right to terminate this Amendment with respect to itself and the defaulting party by delivery of notice to all of the other parties. During the dispute resolution process, all parties shall continue to perform under the terms and conditions of this Amendment. For the purposes of this Section 7 (b), it is understood and agreed that only the Department may give notice and pursue resolution and remedies with respect to Events of Default by either Contractor, and that a Contractor may give notice and pursue resolution and remedies only with respect to the Events of Default by the Department.
- c. The Department and Contractors mutually waive and release any and all rights they might otherwise have under law or equity to recover indirect, incidental or consequential damages of any nature, whether arising in contract, tort or any other legal theory. In no event shall the total liability

of the Department, including payments made or payable under this Amendment, exceed either the Contract Price set forth in Section 2(j) herein or the termination costs that the Contractor is entitled to receive pursuant to Section 9.

- d. In the event of a Event of Default by Alpha, and if the Department elects to terminate the Amendment as to Alpha in accordance with Section 7 (b), the Department shall be entitled to recover from Alpha the sum of (1) an amount equal to ten percent (10%) of the aggregate amount of funds that have been fully committed by the Department to the development of the Hawks Nest Section as of the date of termination, less amounts paid to Alpha pursuant to Section 2 (j); (2) any amount deducted by the Department with respect to property to be subject to condemnation proceedings as of the date of termination, as described in Section 2(d); and (3) unless Alpha has obtained all Revised Permits in accordance with the Contract Documents, an administrative charge of \$300,000 to compensate the Department for estimated cost associated with the re-procurement of services to develop the Hawks Nest Section. For purposes of this Section 7 (d), funds shall be deemed "fully committed by the Department to the development of the Hawks Nest Section" only when such funds are available for disbursement to Alpha subject only to restrictions or conditions stated in this Amendment, and such funds either (i) are approved by the Governor if in the form of a TPOF grant for the Work or (ii) are otherwise appropriated by the General Assembly and allocated by the Commonwealth Transportation Board to the Department for the Work.

The parties acknowledge, recognize and agree on the following: (a) because of the unique nature of the Work, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Department as a result of a Event of Default; (b) any sums which would be payable under this Section 7 (d) are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and (c) any sums payable pursuant to this Section 7 (d) shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by the Department which are occasioned by any Event of Default. Notwithstanding the above, liquidated damages are not intended to excuse Alpha from liability for any other breach of its obligations under this Amendment. In addition, in the event that Alpha fails to pay to the Department the sum specified by this Section 7 (d) within thirty (30) days of delivery of demand for payment to Alpha by the Department, then the Department shall be entitled to elect to pursue all other available remedies, including, but not limited to recovery of its actual damages, in lieu of the above stated liquidated damages, and such other relief as it may desire.

8. Dispute Resolution:

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

i. With respect to matters pertaining to the Work, the Department's Project Manager and the Contractor's Project Manager will meet to review and resolve contract disputes. In the event of failure to resolve a dispute at this level, then either party may request that the dispute be elevated to the Department's Bristol District Construction Engineer and the Contractor's Project Superintendent.

ii. In the event of failure to resolve a dispute at this level within thirty (30) days after such request is made, either party may request, which request shall include all pertinent correspondence and information, that the dispute be elevated to the Department's Chief Engineer or other senior representative designated by the Chief Engineer and the Contractor's Vice President or other senior representative designated by the Contractor's Chief Executive Officer.

iii. In the event of failure to resolve a dispute at this level within forty-five (45) days after such request is made, either party may request that the dispute be elevated to the Department's Commissioner and the Contractor's Chief Executive Officer.

iv. If a dispute remains unresolved after the parties participate in the process set forth in Section 8 (a) for more than sixty (60) days following referral to the Commissioner and Contractor's Chief Executive Officer, either party shall be entitled to bring a civil action, which shall be filed, heard and decided in the Circuit Court of the City of Richmond and shall be the exclusive jurisdiction and venue for any such civil actions brought by any party against any other party; provided, however, that the foregoing does not affect any claims or matters which are governed by a different dispute resolution procedure set forth in any other agreement between the parties.

v. During any dispute resolution proceeding under this Amendment, under no circumstances shall Alpha be required to curtail its operations in the Hawks Nest Section pursuant to the mining permit.

vi. Notwithstanding the foregoing, disputes related to the conformity of the Work to the Required Permits may be referred, at any time, by any party to the affected permitting agency for consideration.

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

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

a. The Department may terminate for public convenience the rights and obligations conveyed or required by this Amendment at any time by giving written notice of the termination to Contractors. Specifically, the Department may elect to terminate this Amendment and the rights and obligations of the Department and only one of the Contractors, thereby allowing for this Amendment to remain in effect with respect to the Department and the other Contractor. If the Department intends to take such action, it shall deliver to the Contractor or Contractors, as appropriate, a notice ("Notice of Termination for Public Convenience").

b. After receipt of a Notice of Termination for Public Convenience, and except as directed by the Department, Contractor shall immediately proceed as follows, regardless of any delay in payment of any amounts due under this Section 9, with respect to the terminated Work: (i) transfer and deliver to Department or its designee, as directed by the Department: (1) the Work for which the Department has paid Alpha pursuant to Section 2 (j), subject to the Contractor's ongoing obligations under Required Permits; and (2) copies of, and all rights, title and interest of Contractor in and to: (a) all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples, surveys, information and other Work Product that would have been required to be furnished to the Department if the Work had been completed; (b) all intellectual property developed specifically for the Department under this Amendment; and (c) in regards to termination of Work on the Hawks Nest Section, title to the ROW Areas identified in the ROW Plan, together with the restrictions under the Declarations, in accordance with Section 2 (d) for which Alpha has been paid or is due payment from the Department or, if not then acquired, all documentation obtained or prepared by Alpha in connection with the acquisition of such property in accordance with Section 2(d)(viii) of this Amendment; (ii) complete performance of all Work not terminated; and (iii) take reasonable steps that may be necessary, for the protection and preservation of the property, if any, related to the Work that is in the possession of the Contractor and in which the Department has or may acquire an interest.

c. Nothing contained in this Section shall be deemed to relieve the Department of its obligation to pay amounts then otherwise due and payable to the Contractor pursuant to Section 2 (j) of this Amendment, except to the extent otherwise provided by Section 9 (e).

d. Upon receiving Notice of Termination for Convenience, neither the Department nor the Contractor shall have any continuing duty to the other under this Amendment with respect to the Work terminated, except as expressly provided by this Section 9 or those provisions of this Amendment that are intended to survive termination of this Amendment (such as Section 2 (f) (ii)). However, the parties understand that under no circumstances shall Alpha be required to curtail its operations in the Hawks Nest Section pursuant to the mining permit.

e. In the event of termination for convenience pursuant to this Section in regards to the Hawks Nest Section, the Department shall pay Alpha, in full discharge of all of its obligations to Alpha under this Amendment except for obligations to pay for Work not terminated pursuant to Section 9 (b) (ii), liquidated damages in the sum of \$1,000,000, in addition to any amounts then due in accordance with Section 2 (j). The parties acknowledge, recognize and agree on the following: (a) because of the unique nature of the Work, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Alpha as a result of termination for convenience by the Department; (b) any sums which would be payable under this Section 9 (e) are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and (c) any sums payable pursuant to this Section 9 (e) shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Alpha as a result of termination for convenience by the Department. In the event of such termination for convenience and upon payment by the Department to Alpha of the amounts due pursuant to the preceding sentence, neither Alpha nor any third parties shall be entitled to recover anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or indirect, incidental or consequential damages. The termination of this Amendment pursuant to this Section 9 shall not be deemed to affect any of the Department's rights or Alpha's obligations, with respect to compliance of the Work which has achieved Final Completion with all applicable requirements (including Sections 2 (m) or 2 (k)), or any of its rights to indemnification under Section 2 (f) (ii).

f. In the event of termination for convenience in regards to the Rockhouse Section pursuant to this Section, the Department shall owe no payment or other obligation to Pioneer under this Amendment.

g. The amount otherwise due Alpha under this Section 9 shall be reduced by: the amount of any valid claim which Department may have against Alpha in connection with this Amendment.

10. Notification Procedures:

All notifications, requests, approvals, consents, and determinations referenced in this Amendment shall be in writing, shall be sent to the individuals designated pursuant to

this Section 10, by personal delivery, first class U.S. mail (postage prepaid), nationally recognized overnight courier service, or facsimile transmission to such individual (with confirmation of delivery), at the address or facsimile number provided for that individual below, and shall be deemed given or delivered when received by the recipient.

Alpha:

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

With copies to:

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

Charles E. Wall, Esq.
Williams Mullen
1021 East Cary Street
17th Floor
Richmond, VA 23219
Facsimile: (804) 783-6507

Pioneer:

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

With copy to:

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

The Department:
Chief Engineer
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23218

With copies to:

Bristol District Administrator
Virginia Department of Transportation
870 Bonham Road
Bristol, VA 24203
Facsimile: (276) 645-1682

CFX Project Manager
Virginia Department of Transportation
870 Bonham Road
Bristol, VA 24203
Facsimile: (276) 645-4874

Office of the Attorney General
900 East Main Street
Attention: Transportation Section Chief
Richmond, VA 23210
Facsimile: (804) 786-9136

11. Designation of Representatives:

a. Each of the parties to this Amendment designate the individuals identified below as that party's representative, who shall be authorized to make decisions on behalf of, and to bind that party, on matters relating to this Amendment, including the amendment, waiver or modification of any of the terms of this Amendment. A party may designate additional or alternative representatives and/or notice recipients, by delivery of prior notice to the other parties.

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

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

The Department:
Chief Engineer
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23218

b. A party may also designate technical representatives who shall be authorized to investigate, negotiate, and report on behalf of that party, but who do not have the authority to enter into binding agreements, which individuals are either specified below or shall be identified by subsequent notice to the other parties, and shall of the authority established by this Amendment or by subsequent notice to the other parties.

Department Project Manager:

CFX Project Manager
Virginia Department of Transportation
870 Bonham Road
Bristol, VA 24203
Facsimile: (276) 645-4874

Alpha Project Manager:

Roman Lawson, PE
Paramont Coal Company Virginia, LLC
5703 Crutchfield Drive
Norton, VA 24273

Alpha Project Superintendent:

Arlie Collier
Paramont Coal Company Virginia, LLC
5703 Crutchfield Drive
Norton, VA 24273

12. Approvals:

In all cases where approvals, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such

determinations shall be made reasonably and timely, except as otherwise expressly provided by this Amendment.

13. Public Correspondence and Communications:

The parties shall notify the other parties prior to the submission of any written correspondence to any representative of the media, or to a third party for the purpose of publication to the general public. Such communications may include, but are not limited to, a press release, an opinion document, or other similar instrument.

14. Assignment:

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

b. Neither Contractor shall assign its rights or obligations under this Agreement, without the prior written consent of the Department, which consent shall not be unreasonably withheld. In exercising its right to consent or to withhold its consent to an assignment, the Department may consider, among other things, (i) the absence of reasonable assurances of the legal authority of the assignor or proposed assignee to effect such assignment or the legal authority and/or financial capacity of the proposed assignee to perform the assignor's obligations; (ii) the extent to which the proposed assignee owns or controls surface and subsurface rights and coal reserves comparable or the same as those owned or controlled by that Contractor within the alignment generally described by the Feasibility Studies, as evidenced by relevant mining permit(s); and (iii) the availability of guaranties and other security offered by the proposed assignor to ensure performance of the proposed assignee.

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

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

15. Governing Law and Venue:

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

16. No Third Party Beneficiaries:

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

17. Appropriations and Allocations:

Notwithstanding anything to the contrary set forth in this Amendment, the Department's obligation to make any payments shall be subject to (i) approval of funds for a TPOF grant or grants to the Department for the Work and/or (ii) appropriations by the General Assembly and allocations by the Commonwealth Transportation Board of funds sufficient to make such payments. The Department agrees to make payment to Alpha for the first \$5,000,000 as and when due pursuant to Section 2 (j), from TPOF funds awarded to the Department on April 3, 2008. Payment to Alpha pursuant to Section 2 (j) of amounts in excess of \$5,000,000 is contingent upon approval of a second TPOF grant for an additional \$5,000,000 or appropriation and allocation of other funding to the Department for the Work.

18. Entire Agreement:

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

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

Original signatures on file in the Innovative Project Delivery Division

“Department”

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

By: _____

David S. Ekern, PE
Commonwealth Transportation Commissioner

“Contractors”

ALPHA NATURAL RESOURCES, LLC
a Delaware Limited Liability Company

By: _____

Its: _____

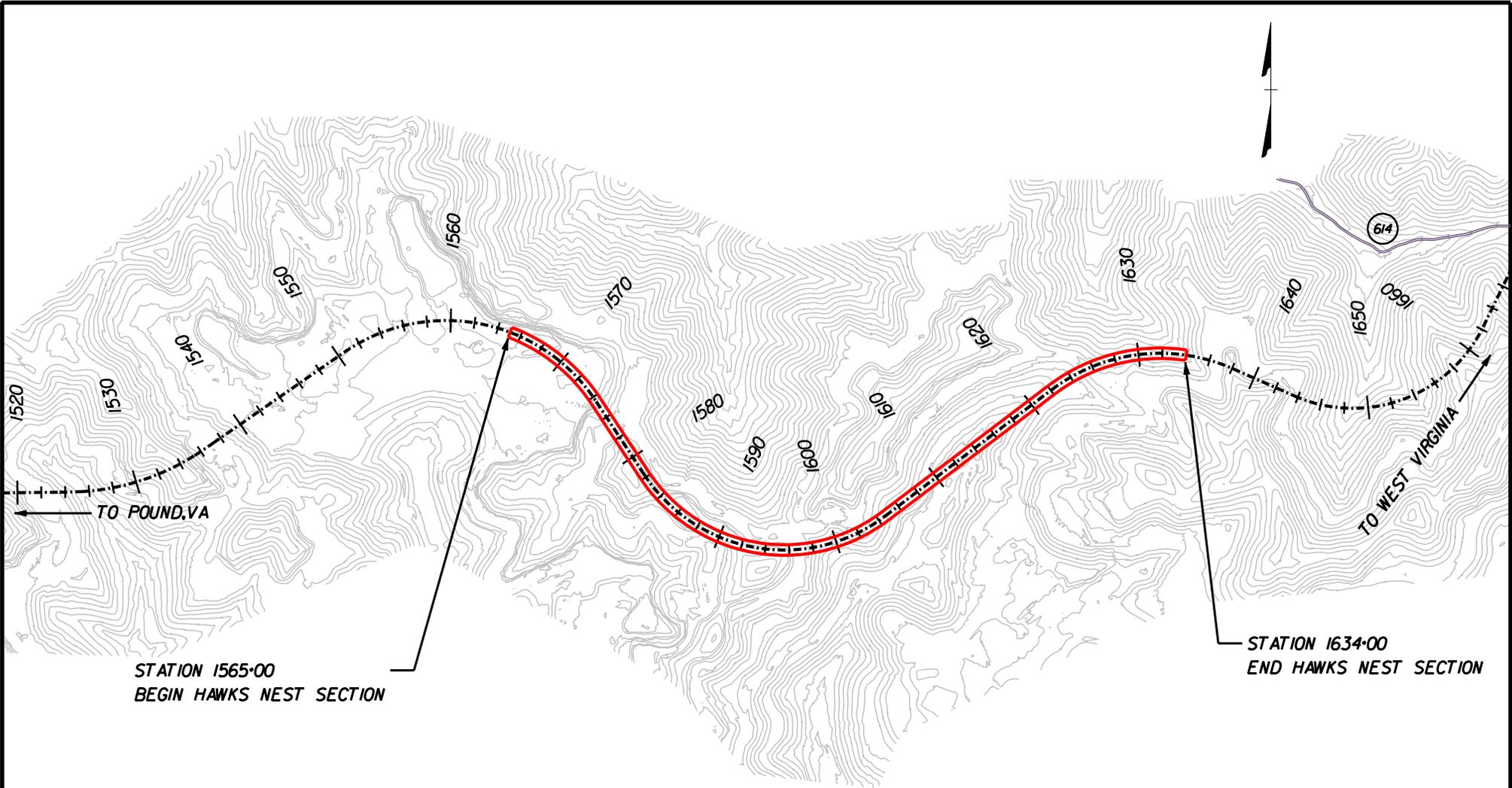
PIONEER GROUP, INC.
a Virginia corporation

By: _____

Its: _____

EXHIBITS

Attachment A	Geographic Depiction of Hawks Nest Section
Exhibit 1	TPOF Decision Documents
Exhibit 2	Required Permits
Exhibit 3	Project Specifications (VDOT)
Exhibit 4	Minimum Design Criteria
Exhibit 5	Agreement to Convey and Deliver, with attached Exhibits
Exhibit 6	Not Used
Exhibit 7	Minimum Liability Insurance
Exhibit 8	Schedule
Exhibit 9	VDOT Oversight Plan



STATION 1565+00
BEGIN HAWKS NEST SECTION

STATION 1634+00
END HAWKS NEST SECTION

NOT TO SCALE

ATTACHMENT A
to the SECOND AMMENDMENT to ASSIGNMENT
and ASSUMPTION AGREEMENT

HAWKS NEST SECTION

EXHIBIT 1
TPOF DECISION DOCUMENTS

Decision Brief
for
The Honorable Timothy M. Kaine

Request: Governor's action to award financial assistance from the Transportation Partnership Opportunity Fund to the Virginia Department of Transportation ("VDOT" or the "Department") to assist in financing certain improvements associated with the Hawks Nest segment of the U. S. Route 460 Coalfields Expressway project in Southwest Virginia.

Recommendation: It is recommended that the Governor approve, subject to the conditions outlined within, \$5,000,000 in the form of a grant to the Department.



Reta Busher, VDOT CFO
Date 2/13/08

CONCURRENCE

Secretary of Transportation

Recommend
Recommend w/ Modification*
Deny

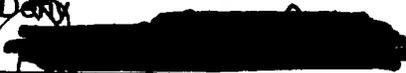


Pierce R. Homer

Date 2/18/08

Secretary of Commerce and Trade:

Recommend
Recommend w/ Modification*
Deny



Patrick O. Gottschalk

Date

* grants contingent on no budget amendments (eg. permitting)

Secretary of Finance:

Recommend
Recommend w/ Modification*
Deny



Jody M. Wagner

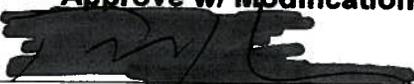
Date 2/19/08

APPROVAL

Approve

Approve w/ Modification

Deny

Governor: 

Timothy M. Kaine

Date 4/3/08

EXHIBIT 1
TPOF DECISION DOCUMENTS

Background: In accordance with Chapter 847 of the 2005 Acts of Assembly, the Governor is requested to award a \$5,000,000 grant from the Transportation Partnership Opportunity Fund (the "Fund" or "TPOF") to the Virginia Department of Transportation ("VDOT" or the "Department"). The grant will be used by VDOT to advance, along with its private partner, Alpha Natural Resources, LLC, a section of the Hawks Nest segment of the U. S. Route 460 Coalfields Expressway (CFX) to take advantage of cost savings that can be realized through a "coal synergy" arrangement.

Discussion: The Transportation Partnership Opportunity Fund was created by Chapter 847 of the 2005 Acts of Assembly as a part of the 2005 Transportation Initiatives. The Fund is a source of financing to be used to encourage the development of transportation projects through the design-build provisions of the Code of Virginia and pursuant to the Public-Private Transportation Act of 1995 and to address the transportation aspects of economic development opportunities. The Department submitted an application requesting \$10,000,000 in financial assistance, in the form of two \$5,000,000 grants, the first to be made available in Fiscal Year (FY) 2008 and the second in FY 2009.

The project meets the transportation evaluation guidelines and criteria established for the Fund. It is being delivered under the Public-Private Transportation Act of 1995, pursuant to §56.556 *et seq.*, of the Code of Virginia. The Department is an agency of the Commonwealth of Virginia (the "Commonwealth").

The section of the Hawks Nest segment of the CFX involves approximately 2-miles of roadbed. The \$5,000,000 in TPOF monies will be used for project development activities and construction of the section to a rough grade roadbed.

Using state monies for the advancement of this segment will assist in providing evidence to the Federal Highway Administration ("FHWA") that the Commonwealth is committed to developing the CFX.

Conclusion: The Secretary of Transportation, the Secretary of Commerce and Trade and the Secretary of Finance recommend the Governor award financial assistance from the Fund, in the form of a grant, to the Department in the amount of \$5,000,000. This recommendation is conditioned on the following:

Award Conditions: The award is subject to the following conditions:

- \$10,000,000 was requested, however, the TPOF Advisory Panel recommended limiting the initial award to \$5,000,000 for FY 2008. The \$5,000,000 requested for FY 2009 can be considered:
 - Upon approval by FHWA that these monies will be allowed as state match to other federal money available to the CFX project.
 - An agreement or an amendment to existing agreements under the PPTA must be reached between Alpha Natural Resources, LLC and VDOT to carry out this work.
 - An application from Alpha Natural Resources is submitted requesting consideration of the additional \$5,000,000 for the FY 2009 portion.

EXHIBIT 1
TPOF DECISION DOCUMENTS

- Successful negotiation and execution of a financing agreement between the Secretary of Transportation and the Department for the initial \$5,000,000.
 - Transfer or assignment of the initial grant from the Department to Alpha Natural Resources, LLC can be considered and will be subject to approval by the Secretary of Transportation.
- The grant will be disbursed on a reimbursable basis, based on costs incurred for the project.

References: Chapter 847 of the 2005 Acts of Assembly requires the Governor to award monies from the Fund in the form of grants, revolving loans or other forms of financial assistance.

EXHIBIT 1
TPOF DECISION DOCUMENTS

Decision Brief
for
The Honorable Timothy M. Kaine

Request: Governor's action to award financial assistance from the Transportation Partnership Opportunity Fund to the Virginia Department of Transportation ("VDOT" or the "Department") to assist in financing certain improvements associated with the Rockhouse segment of the U. S. Route 460 Coalfields Expressway project in Southwest Virginia.

Recommendation: It is recommended that the Governor approve, subject to the conditions outlined within, \$5,000,000 in the form of a grant to the Department.



Reta Busher, VDOT CFO
Date: 2/13/08

CONCURRENCE

Secretary of Transportation

Recommend
Recommend w/ Modification*
Deny



Pierce R. Homer
Date: 2/18/08 (duplicate)

Secretary of Commerce and Trade:

Recommend
Recommend w/ Modification*
Deny



Patrick O. Gottschalk
Date: 2-19-08

*grants contingent on no budget amendments

Secretary of Finance:

Recommend
Recommend w/ Modification*
Deny



Jody M. Wagner
Date: 2/19/08

APPROVAL

Approve Approve w/ Modification Deny

Governor: 

Timothy M. Kaine
Date: 4/11/08

EXHIBIT 1
TPOF DECISION DOCUMENTS

Background: In accordance with Chapter 847 of the 2005 Acts of Assembly, the Governor is requested to award a \$5,000,000 grant from the Transportation Partnership Opportunity Fund (the “Fund” or “TPOF”) to the Virginia Department of Transportation (“VDOT” or the “Department”). The grant will be used by VDOT to advance, along with its private partner, the Pioneer Group, Inc. a section of the Rockhouse segment of the U. S. Route 460 Coalfields Expressway (CFX) to take advantage of cost savings that can be realized through a “coal synergy” arrangement.

Discussion: The Transportation Partnership Opportunity Fund was created by Chapter 847 of the 2005 Acts of Assembly as a part of the 2005 Transportation Initiatives. The Fund is a source of financing to be used to encourage the development of transportation projects through the design-build provisions of the Code of Virginia and pursuant to the Public-Private Transportation Act of 1995 and to address the transportation aspects of economic development opportunities. The Department submitted an application requesting \$10,000,000 in financial assistance, in the form of two \$5,000,000 grants, the first to be made available in Fiscal Year (FY) 2008 and the second in FY 2009.

The project meets the transportation evaluation guidelines and criteria established for the Fund. It is being delivered under the Public-Private Transportation Act of 1995, pursuant to §56.556 *et seq.*, of the Code of Virginia. The Department is an agency of the Commonwealth of Virginia (the ‘Commonwealth’).

The section of the Rockhouse segment of the CFX involves approximately 1-mile of roadbed. The \$5,000,000 in TPOF monies will be used for project development activities and construction of the section to a rough grade roadbed.

Using state monies for the advancement of this segment will assist in providing evidence to the Federal Highway Administration (“FHWA”) that the Commonwealth is committed to developing the CFX.

Conclusion: The Secretary of Transportation, the Secretary of Commerce and Trade and the Secretary of Finance recommend the Governor award financial assistance from the Fund, in the form of a grant, to the Department in the amount of \$5,000,000. This recommendation is conditioned on the following:

Award Conditions: The award is subject to the following conditions:

- \$10,000,000 was requested, however, the TPOF Advisory Panel recommended limiting the initial award to \$5,000,000 for FY 2008. The \$5,000,000 requested for FY 2009 can be considered:
 - Upon approval by FHWA that these monies will be allowed as state match to other federal money available to the CFX project.
 - An agreement or an amendment to existing agreements under the PPTA must be reached between the Pioneer Group, Inc. and VDOT to carry out this work.
 - An application from the Pioneer Group, Inc. is submitted requesting consideration of the additional \$5,000,000 for the FY 2009 portion.

EXHIBIT 1
TPOF DECISION DOCUMENTS

- Successful negotiation and execution of a financing agreement between the Secretary of Transportation and the Department for the initial \$5,000,000.
 - Transfer or assignment of the initial grant from the Department to the Pioneer Group, Inc. can be considered and will be subject to approval by the Secretary of Transportation upon execution of the PPTA agreement documents.
- The grant will be disbursed on a reimbursable basis, based on costs incurred for the project.

References: Chapter 847 of the 2005 Acts of Assembly requires the Governor to award monies from the Fund in the form of grants, revolving loans or other forms of financial assistance.

EXHIBIT 2
REQUIRED PERMITS

**Permits/Authorizations Required for Mining Operations at the
Hawks Nest Surface Mine:**

Issuing Agency	Permit Description	Permit No./ Registration No.
VA DMLR ¹	Surface Mining Activities	1101903
VA DMLR	NPDES ²	VA0081903
USACE ³	Section 404-NWP 21	04-K0014
VA DEQ ⁴	Section 401 Certification	General Certification with NWP 21
VA DEQ	Portable Rock Crusher	11529
MSHA ⁵	Lover's Gap Mine Facility	44-06949
VA DM ⁶	Lover's Gap Mine Facility	14542AB

The foregoing permits have been obtained as of the date of the Amendment. Required Permits also include all permits and revisions to permits necessary to authorize the configuration of the ROW Areas as a rough grade roadbed as contemplated by the Contract Documents, including revision of the Hawks Nest Mining Permit to allow the post-mining land use of public use-public road.

¹VA Division of Mined Land Reclamation

²National Pollutant Discharge Elimination System

³United States Army Corps of Engineers

⁴VA Department of Environmental Quality

⁵Mine Safety & Health Administration

⁶VA Division of Mines

EXHIBIT 3
PROJECT SPECIFICATIONS

1.0 VDOT MINIMUM GEOTECHNICAL REQUIREMENTS FOR CUT SLOPES

1.1 Soil Cuts

Although unlikely, cuts in soil (“Soil Cut Slopes”) including full cuts, may be encountered in the Hawks Nest Section. The majority, if not all, of the proposed cuts in the Hawks Nest Section are expected to be primarily in rock with minor soil zones at the ends and top of the rock cuts. Design and construction considerations, when soil sections are encountered, include identifying the location and extent, including thicknesses, of such soil masses along the alignment and applying the following cut slope design requirements:

- Construct all Soil Cut Slopes no steeper than 2H:1V unless a steeper slope is approved by the Department.
- Although not anticipated, any Soil Cut Slopes that are greater than twenty-five (25) ft in height shall be designed by a qualified professional engineer registered in the Commonwealth of Virginia. All Soil Cut Slope designs shall be based on (i) an engineering analysis supported by a site-specific field investigation plan (approved by the District Materials Engineer); (ii) a laboratory testing program; (iii) an evaluation of short and long term measured or estimated ground water levels; and (iv) a plan designed to meet a minimum long-term static safety factor of 1.5 against instability of the fill slope.

1.2 Rock Cuts

The performance objectives for rock cuts in the Hawks Nest Section include: (i) designing for long term stability of the cut, (ii) minimizing the potential for future rock-falls, (iii) reducing the Department’s long term maintenance costs, and (iv) controlling the risk to the traveling public by planning for how to reduce the chances of the material reaching the roadway in the unlikely event a rock-fall occurs.

To meet these objectives, design and construction considerations for the Hawks Nest Section should include an (i) understanding of the geologic structure, stratigraphy and lithology of rock units in the area of the cuts, (ii) evaluation of the characteristics of the rock mass with respect to quality (i.e., strength and frequency, orientation and condition of discontinuities) and durability, (iii) assessment of the areas where rock falls would have the potential to reach the roadway and design preventive measures as necessary, and (iv) incorporation of local experience with rock cuts in the area during the design phase.

Given these objectives and considerations, Alpha’s design geotechnical engineer should develop designs for rock cut slopes based on the procedures and minimum requirements provided herein, which includes: (i) evaluating the weathering characteristics for rock units in the Hawks Nest Section, (ii) determining cut slope ratios based on lithology, rock mass quality and rock unconfined compressive strength, (iii) controlling blasting impacts

EXHIBIT 3
PROJECT SPECIFICATIONS

on the quality of the finished slope, (iv) providing for regular coordination and site visits by Alpha's design geotechnical engineer during slope construction, (v) and providing for treatments at drainage gully crossings, if any.

The following are minimum design procedures and requirements for bedrock cut slopes in the Hawks Nest Section.

1.2.1 Review Existing Geologic Information

Alpha shall review available geologic information relating to the bedrock in the Hawks Nest Section including published and unpublished geologic information, previously prepared geotechnical reports, and observations of sloping techniques used for other road-cuts in the vicinity.

1.2.2 Perform a Field Reconnaissance

Alpha shall perform a site reconnaissance that includes but is not limited to: (i) observations of rock exposures in and around the project area to include logging of the orientation and condition of joints and other discontinuities in the rock exposures and observation of the performance of existing cut slopes in the same rock units, (ii) a review of available core-hole loggings, if any, for information on the strata expected to be encountered, (iii) drilling of additional representative core-hole boring in the proposed rock cut-slope areas and log the core-hole boring, (iv) use of the core-hole boring information and visual observations to measure or predict the orientation and likely condition of joints and other discontinuities along with the information obtained from logging of rock exposures that may be encountered in the area of the proposed rock cut slopes project stratigraphy, and (v) measurement of rock quality designation (RQD) and reporting for each core run and for each stratum. The stratum rock quality designation (SRQD) is where the length of the RQD rock within a stratum is divided by the thickness of the stratum.

1.2.3 Laboratory Testing

Alpha shall conduct laboratory testing on rock core samples, obtained from the additional core-hole boring, to determine the 2-cycle Slake Durability Index (SDI) and unconfined compressive strength (UCS) for use in the development of design parameters.

1.2.4 Rock Cut Minimum Slope Criteria

The following table shall be used to determine the configuration of the rock cut slopes with the noted exceptions:

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Minimum Slope Design Criteria for Rock Cut Slopes
(For rock with 2-cycle SDI > 80 % ¹)

Bedrock Category	SRQD (%)	UCS (psi)	Slope⁴ Ratio (H:V)	Max Height Between Benches³ (ft)
A	>70	> 5,000 3,000-5,000 <3,000	1/2H:1V ² 1/2H:1V 1H:1V	50
B	51-70	>5,000 3,000 – 5,000 <3,000	1/2H:1V 1/2H:1V 1H:1V	50
C	20-50	> 5,000 3,000-5,000 <3,000	1/2H:1V 1H:1V 1H:1V	40
D	<20%	NA	1.5H:1V	NA

Notes:

¹ For rock units with a 2-cycle SDI <80% use 1.5H:1V unless proven history of past performance indicates steeper slope is acceptable and if approved by the Department.

² May use 1/4H:1V for sandstone.

³ Within the same lithologic unit

⁴ Represents the steepest allowable slope ratio for all rock cut slopes. Alpha shall perform the required analysis based upon the criteria outlined herein to determine if a flatter slope is required to achieve adequate stability of the cut slope.

1.2.5 *Cut Slope Benches*

Alpha shall include cut slope benches at the following locations:

- Lithologic Bench – At the base of sandstone units, which are underlain by shale, claystone, clayshale or coal units. Also at the base of rock units which are underlain by units having lower SDI values.
- Soil/Rock Transitions Bench - At the soil/bedrock interface, if any, at the top of a rock cut unless approved otherwise by the Department.
- Maximum Interval Bench - At maximum intervals indicated in the above Table.

Lithologic and Maximum Interval Benches shall have a minimum width of fifteen (15) feet and Soil/Rock Transition Benches shall have minimum width of ten (10) feet. All

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PROJECT SPECIFICATIONS

benches shall be constructed in a manner that minimizes the potential of water accumulation on the bench.

1.2.6 Evaluation of Discontinuities

The discontinuity information obtained from the field reconnaissance shall be used to analyze the risk of block, wedge, or toppling failures in the proposed rock cut slopes. Alpha shall use the results of the analyses and consider if slopes flatter than those in the table of Slope Design Criteria are warranted to reduce the potential for failures.

1.2.7 Additional Protection of Traveling Motorists from Potential Rock-falls

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

1.2.8 Develop Geologic Cross-Sections

Alpha shall develop cross-sections showing the geologic and proposed cut configuration at a minimum of fifty (50) foot intervals along the alignment to verify the effectiveness of the design. Changes and transitions in slope configurations and ratios based on design borings and field observations should be smooth rather than rapid and frequent where variations between borings are obtained.

1.2.9 Develop Cut Plan View

Alpha shall develop a plan view of the proposed cut configuration to assess its effectiveness and impacts from drainageways as indicated below.

1.2.10 Blasting Control

When explosives are used in excavation of rock cuts, Alpha shall use the pre-split blasting technique, with horizontal spacing no greater than three (3) feet and vertical lengths (length between benches) no greater than fifty (50) feet. The pre-split technique

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will not be used for fill bench construction and where slopes flatter than 1H:1V is designed. Alpha shall be solely responsible for design of the slope, the blasting pattern, the execution of the blasting control to achieve stable cut slopes.

1.2.11 Coordination and Quality Assurance (QA)/Quality Control (QC) Review by Project Geotechnical Engineer

Alpha's design geotechnical engineering firm shall require that either an experienced geotechnical engineer, an experienced geologist, or an engineer who is experienced with pre-splitting techniques, rock excavation, and blasting techniques be on-site during excavations or visit the site at regular intervals during construction to perform a QA/QC review of slope excavation operations and verify the planned slope design is suitable or make modifications, if necessary.

The minimum requirements as set forth in Section 1.2 of this Exhibit are intended to provide a baseline which VDOT believes necessary for use in design and construction of cut slopes for the Hawks Nest Section. These requirements are not inflexible and cannot account for all potential scenarios. Ultimately, it will be the responsibility of Alpha's qualified geotechnical engineer to perform the needed field investigation, laboratory testing, analysis, and observations during construction to assure an adequate design to meet the objectives noted above. However, any substantial modifications from these minimum requirements will require VDOT's approval.

2.0 FILL SECTION MATERIAL WITHIN FIVE FEET (5') OF SURFACE ELEVATION

The Contractor will make a reasonable effort to assure that 85% of the material placed in the top five (5) feet of the fills is thirty-six (36) inches or less in the greatest dimension. A visual monitoring of the material will be made during placement and any rock fragments larger than five (5) feet should be removed or placed outside the proposed shoulder of the roadway.

EXHIBIT 4
MINIMUM DESIGN CRITERIA

Design Speed:	60 mph
Min Radius:	1204 feet
Max Grade:	6.0%
Cut Slope:	
Soil Cut:	In accordance with Exhibit 3 Project Specifications
Rock Cut:	In accordance with Exhibit 3 Project Specifications
Valley Fill Slopes	Effective 2:3H:1V after benches
Minimum Width of Right of Way Limits:	150 feet

In addition, Contractors shall perform the design work in accordance with the applicable VDOT standards and guidelines for the referenced design speed and grade when developing the horizontal and vertical alignments for the Contract Documents.

EXHIBIT 5

AGREEMENT TO CONVEY AND DELIVER

THIS AGREEMENT TO CONVEY AND DELIVER (the "Agreement") is made and entered into on this _____ day of _____, 20__, by and between **PARAMONT COAL COMPANY VIRGINIA, LLC**, a Virginia limited liability company, hereinafter referred to as "Paramont," and the **VIRGINIA DEPARTMENT OF TRANSPORTATION**, an agency of the Commonwealth of Virginia, hereinafter referred to as the "Department."

WHEREAS, Paramont is the owner of the surface of certain real property ("Paramont's Property") located in Buchanan County, Virginia; and

WHEREAS, the Department has entered into a Second Amendment to Assignment and Assumption Agreement dated August _____, 2008 (the "Amendment"), for the development of rough grade four-lane roadbed segments suitable for the future construction of a public-use highway referred to as the Coalfields Expressway (the "Project"), which necessitates the transfer of parcels or portions thereof of Paramont's Property to the Commonwealth of Virginia (the "Commonwealth"); and,

WHEREAS, in accordance with the terms and conditions of the Amendment, Paramont agrees to convey to the Commonwealth, the surface of certain parcels or portions thereof of Paramont's Property; and

WHEREAS, Paramont has in its possession one or more Declarations of Covenants and Restrictions (the "Declarations") executed by owners and lessees of coal, clay or clay product, or other solid mineral underlying Paramont's Property necessary for the development of the Project and, in accordance with the terms and conditions of the

Amendment, shall deliver such Declarations to the Commonwealth; and

WHEREAS, the purpose of this Agreement is to provide for such conveyance and delivery by Paramont to the Commonwealth.

NOW, THEREFORE, in consideration of the foregoing and good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Paramont and the Department agree to the following:

1. In accordance with the terms and conditions of the Amendment, Paramont shall convey to the Commonwealth free and clear of judgment liens, mortgages, deeds of trust and delinquent real property taxes, by execution and delivery of the General Warranty Deed (the "Deed"), an unexecuted copy of which is attached to this Agreement as Exhibit A, the surface and surface only, of that certain tract or parcel of Paramont's Property situated in Buchanan County, Virginia, together with permanent easements required for construction, operation and maintenance of the Project, as more particularly described in the Deed.

2. When the Deed is delivered to the Commonwealth, Paramont shall also deliver executed originals of all obtained Declarations from the owners and lessees of coal, clay or clay product and other solid mineral, unexecuted copies of which are attached hereto as Exhibit B.

3. The Department shall be entitled to record this Agreement, and attached Exhibits, at its sole expense.

4. Paramont waives its right to compensation for the contribution of Paramont's Property.

5. This Agreement is binding on the successors and assigns of the respective

parties.

6. This instrument is severable such that the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of the remaining provisions.

7. This Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia.

8. All notices required hereunder shall be in writing, delivered personally, or sent by nationally recognized overnight courier service, or by certified mail, return receipt requested, and addressed to the appropriate party as follows:

IF TO PARAMONT:

Paramont Coal Company Virginia, LLC
P.O. Box 2345
Abingdon, Virginia 24212
ATTN: General Counsel
(Address for certified mail)

Paramont Coal Company Virginia, LLC
One Alpha Place
Abingdon, Virginia 24210
ATTN: General Counsel
(Address for personal delivery or overnight courier service)

IF TO THE DEPARTMENT:

Chief Engineer
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23218

With copies to:

Bristol District Administrator
Virginia Department of Transportation
870 Bonham Road
Bristol, VA 24203

CFX Project Manager
Virginia Department of Transportation
870 Bonham Road
Bristol, VA 24203

Office of the Attorney General
900 East Main Street
Attention: Transportation Section Chief
Richmond, VA 23210

Such notices shall be deemed given upon the earlier of (a) actual receipt, (b) seven business days after being mailed by certified mail, return receipt requested with postage prepaid, or one business day after being deposited with a nationally recognized overnight courier service with charges prepaid.

9. This Agreement contains the entire understanding of the parties as to its subject matter, and may not be amended, supplemented, or discharged except by an instrument in writing signed by the parties hereto. The parties recognize and agree that Paramont is not a party to the Amendment and, therefore, this Agreement does not in any manner supersede or modify the Amendment.

WITNESS the following authorized signatures and seals on behalf of the parties:

PARAMONT COAL COMPANY VIRGINIA, LLC

By: _____
Its: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF _____

I, _____, a notary public, do hereby certify that _____, the _____ of Paramount Coal Company Virginia, LLC, a Delaware limited liability company, whose name is signed to the writing above bearing date of the _____ day of _____, 20____, has acknowledged the same before me in the State aforesaid on behalf of the limited liability company.

Given under my hand this the _____ day of _____, 20____.

Notary Public

VIRGINIA DEPARTMENT OF TRANSPORTATION
an agency of the COMMONWEALTH OF VIRGINIA

By: _____
Its: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF _____

I, _____, a notary public, do hereby certify that _____, the _____ of the Virginia Department of Transportation, an agency of the Commonwealth of Virginia, whose name is signed to the writing above bearing date of the _____ day of _____, 20____, has acknowledged the same before me in the State aforesaid on behalf of the agency.

Given under my hand this the _____ day of _____, 20____.

Notary Public

EXHIBIT A

TAX MAP #

G-PIN #

**PREPARED BY VDOT
UNDER SUPERVISION OF THE
OFFICE OF THE ATTORNEY GENERAL**

Exempted from recordation taxes
and fees under Sections 58.1-811(A)(3),
58.1-811(C)(5), 58.1-3315, 25.1-418,
42.1-70, 17.1-266, and 17.1-279(E)

This Deed, made this _____ day of _____, 20__, by and between **PARAMONT COAL COMPANY VIRGINIA, LLC**, a Virginia limited liability company, hereinafter designated as Grantor, and the **COMMONWEALTH OF VIRGINIA**, hereinafter designated as Grantee,

WITNESSETH:

In consideration of the sum of Ten Dollars (\$10.00) paid to the Grantor, receipt of which is hereby acknowledged, the Grantor hereby grants and conveys unto the Grantee, with General Warranty, the surface and surface only of that certain tract or parcel of land, which the Grantee intends to use to construct, maintain and operate a four-lane, public-use highway and which includes whatever of the earth, soil, land and waters which lies above and is superincumbent upon the coal underlying the surface of this tract or parcel of land, lying and being [on the waters of [_____,] in Buchanan County, Virginia, and being more particularly described as follows:

Being as shown on plan sheet [_____] of a right of way acquisition plan showing right of way limits to be conveyed to the Commonwealth of Virginia and beginning at a point located on the proposed right of way line and lands of the Grantor _____ feet

(right/left) of Baseline Station _____; thence, along the following courses: *[Insert metes & bounds description here]* together with the permanent right and easement to use such additional areas as located and staked on the ground as being required to *[Insert description to be provided when the use of the easement is known]*]. Said location and stakes have been shown to and approved by the Grantor at or before the execution and delivery of these presents;

The Grantor also grants and conveys unto the Grantee a permanent easement to use the additional areas shown as being required for proper construction and maintenance, beginning at a point located in the proposed right of way line _____ feet (right/left) of Baseline Station _____; thence, along the following courses: *(insert metes and bounds description here for drainage easement if needed)*

Being a portion of the same property conveyed to the Grantor by deed dated [*Insert date*], of record in the Circuit Court Clerk's Office of Buchanan County, as Instrument No. [*Insert instrument number*], from [*Insert name*].

For a more particular description of the land herein conveyed, reference is made to photocopy of Plat entitled " _____, prepared by _____, a surveyor licensed in the Commonwealth of Virginia", showing outlined in RED the land conveyed, and in GREEN the permanent easement, which photocopy is hereto attached as a part of this conveyance and recorded in the State Highway Plat Book _____, Page _____, in the aforesaid Clerk's Office.

The Grantor by the execution of this instrument acknowledges that the plans for the aforesaid project as they affect its property have been fully explained to its authorized representative.

The Grantor covenants and agrees for itself, its successors and assigns, that the consideration hereinabove mentioned and paid to it shall be in lieu of any and all claims to compensation for land, and for damages, if any, to the remaining lands of the Grantor which may

result by reason of the use to which the Grantee will put the land to be conveyed, including such drainage facilities as may be necessary.

WITNESS the following signature and seal:

PARAMONT COAL COMPANY VIRGINIA, LLC

By: _____
Its: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF _____

I, _____, a notary public, do hereby certify that _____, the _____ of Paramont Coal Company Virginia, LLC, a Delaware limited liability company, whose name is signed to the writing above bearing date of the ____ day of _____, 20__, has acknowledged the same before me in the State aforesaid on behalf of the limited liability company.

Given under my hand this the ____ day of _____, 20__.

Notary Public

EXHIBIT B

This instrument prepared by:

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this “Declaration”) is made this _____ day of _____, 20__ *[Insert date no later than date of the related Agreement to Convey]*, by *[Grantor’s name]*, a *[insert type of entity and state of creation, if applicable]*, hereinafter referred to as “Grantor.”

RECITALS

WHEREAS, Grantor holds an ownership or leasehold property interest in coal, clay or clay product or other solid mineral (“Grantor’s Property”) in, on and under certain real property located in Buchanan County, Virginia; and

WHEREAS, the Virginia Department of Transportation (“Department”) has entered into an agreement for the development of rough grade four-lane roadbed segments (the “Hawks Nest Section”) suitable for the future construction of a section of public-use highway referred to as the Coalfields Expressway, which necessitates the restriction of certain interests and rights owned by Grantor; and

WHEREAS, Grantor, in connection with the conveyance of certain real property interests (the “Property”) to the Commonwealth of Virginia (the “Commonwealth”) for the Hawks Nest Section segment, has agreed to place certain restrictions on Grantor’s Property, each and all of which is and are for the benefit of the Property owned now or hereafter by the Commonwealth.

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor, Grantor hereby declares that the portions of the Grantor's Property that underlie the Property, which Property is shown on sheet _____ of a map showing the right of way limits to be conveyed to the Commonwealth, and beginning at a point located on the proposed right of way line and lands of the Grantor _____ feet (right/left) of Baseline Station _____; thence, along the following courses: (*Insert metes & bounds description here*) shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used, subject to the following restrictions and covenants, which shall run with the land and be binding on all successors, assigns, lessees, or other occupiers and users of the property:

1. The restrictions on Grantor's Property, which are for the purpose of protecting the public-use highway and its associated and supporting structures constructed or to be constructed by the Commonwealth, are as follows:

(a) Within the Hawks Nest Section segment and to a depth of 100 feet below the surface elevation of the completed: (i) roadbed limits, (ii) roadbed supporting fills, (iii) drainage structures, (iv) cut-slopes, (v) other support structures associated with the roadbed, and (vi) public roads including pavement, Grantor covenants that no new or additional mining or removal of any coal, clay or clay product, or other solid minerals therein, shall take place after the date of this Declaration.

(b) Within the 300 feet underlying said 100 feet described above, if not already mined and removed, the mining of only sixty percent (60%) of any coal, clay or clay product, or other solid minerals therein shall take place after the date of this Declaration, provided: (i) that, if not already mined and removed, forty percent (40%) of the virgin coal or other solid minerals, in the original seam or seams shall be left in place in the form of evenly spaced pillars of substantially equal

thickness to the width of adjacent entrees, rooms, sections or other mined out areas, which shall not be driven in width in excess of 30 feet; and (ii) that accurate mine maps substantially complying with the present requirements of the Virginia Department of Mines, Minerals and Energy, showing past and projected mining operations related to the centerline of said road at the top of the pavement, be submitted to the Department, at three month intervals or for lesser periods of time should the situation demand it, and which are prescribed by the Department.

(c) If Grantor's property interest is an ownership interest in the coal, clay or clay product or other solid mineral, Grantor covenants and agrees to include a requirement in future solid mineral leases that its lessees shall conduct their operations in accordance with applicable federal, state and local laws, rules and regulations, including the submittal and approval of required subsidence control plans intended to protect applicable structures referenced in items (i) through (vi) of subsection 1(a) above. However, Grantor does not guarantee or insure that its lessees shall comply with such lease requirements. If Grantor conducts mining operations and Grantor's property interest is an ownership interest in the coal, clay or clay product or other solid mineral, or if Grantor is a lessee of the same, Grantor covenants and agrees to conduct its mining operations in accordance with applicable federal, state and local laws, rules and regulations, including the submittal and approval of required subsidence control plans intended to protect applicable structures referenced in items (i) through (vi) of subsection 1(a) above.

(d) Except as expressly provided herein, the terms of this Declaration shall not be construed to (i) create any rights not otherwise held by Grantor or the Commonwealth or (ii) constitute a waiver of any rights of Grantor or Commonwealth.

2. All of the restrictions imposed by this Declaration run with and burden the Property and all restrictions hereby imposed shall be deemed to be restrictions running with the land and shall

be effective limitations on the use of the Grantor's Property from the date of execution of this Declaration in perpetuity. All of these restrictions are binding on Grantor and each successive owner of the Grantor's Property or any portion thereof, and upon each person having any interest in the Grantor's Property thereof derived from any owner of Grantor's Property.

3. Grantor, for itself and its successors in interest, hereby release the Department from any and all liability for any and all claims related to compensation that it may have been entitled to in any eminent domain proceeding that could have been prosecuted against it in connection with the Property and the rights restricted by this Declaration, and to the remaining property of Grantor.

4. Grantor will incorporate (which may be by reference) its obligations under this Declaration in all future deeds, leases, or other transfer documents executed in the future by Grantor for Grantor's Property or any portion thereof or interest therein, and any grantees or other transferees will be required to comply with the restrictions and covenants in this Declaration as if they were a party to this Declaration.

5. This Declaration is binding on the heirs, successors, administrators, personal representatives, lessees and assigns of the Grantor.

6. This instrument is severable such that the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of the remaining provisions.

7. This Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia.

8. This Agreement contains the entire understanding of the Grantor and may not be amended, supplemented, or discharged except by an instrument in writing signed by the Grantor and the Commonwealth.

IN WITNESS WHEREOF, Grantor has caused this Declaration to be duly executed by

its authorized representative.

By: _____

Its: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____

INSERT APPROPRIATE NOTARY ACKNOWLEDGMENT FORM

Given under my hand this the ____ day of _____, 20__.

Notary Public

EXHIBIT 6

NOT USED

EXHIBIT 7
MINIMUM INSURANCE REQUIREMENTS

Alpha and its subcontractors shall obtain, each at no expense to the Department, with insurance companies authorized to do business in the Commonwealth of Virginia, with a “Best Rating” of B, the following insurance coverages, which shall be maintained throughout the term of this Amendment and the performance of work, including warranty period, thereunder:

- (a) Comprehensive General Liability Insurance having minimum limits totaling \$2,000,000 each occurrence, \$4,000,000 aggregate, for death, bodily injury and property damage and destruction, which shall include coverage for, but not limited to (i) premises operations, (ii) contractual liability, (iii) cross-liability, (iv) products and completed operations, (v) explosions, and (vi) collapse and underground.
- (b) Automobile Liability Insurance which includes owned, non-owned and hired or borrowed vehicles on-site or off coverage with minimum limits totaling \$2,000,000 for each, bodily injury and property damage claims.
- (c) Unemployment Benefits Coverage as required under all State and federal laws and regulations for all of its employees.
- (d) Workers Compensation and Employer’s Liability Insurance as is required by any applicable statute, rule or regulation, including, without limitation, Title 65.2 of the Code of Virginia and the Federal Black Lung Benefits Act, and Employer's Liability Insurance, with limits of \$1,000,000 each accident, \$1,000,000 for disease each employee and \$1,000,000 for disease policy limit. In addition, Alpha shall require any subcontractors engaged to perform any portion of the Work under this Amendment to carry Workers Compensation Insurance, as required by applicable statute, rule or regulation, and Employer’s Liability Insurance.

Each of the above required policies of insurance shall be written on an “occurrence” basis, unless the policy is available only on a “claims made” basis, in which case, upon written authorization from the Department, Alpha shall obtain a “claims made” policy and insurance coverage shall be maintained for a period of at least five (5) years after the termination, cancellation or expiration of this Amendment.

The amount of insurance coverage shall not be a limitation on the liability of Alpha under this Amendment, but shall be additional security for such liability. The liability insurance shall be primary and not contributory as to any insurance that the Department may have in effect.

All of the above insurance shall specifically provide that it applies separately to each insured against which a claim is made or suit is brought, except with respect to the limits of the insured’s liability, and that all rights of subrogation against the Department and Alpha, and their respective successors and assigns, are waived.

EXHIBIT 7
MINIMUM INSURANCE REQUIREMENTS

Prior to commencing work under this Amendment and from time to time thereafter, when any renewal, substitute or replacement policy of insurance is obtained, Alpha shall provide the Department with copies of the policies of insurance and certificates of worker's compensation coverage required by this Amendment.

The liability insurance policies shall name the Department as an additional insured. The policies shall also include written assurance of the insurers that the Department will be advised in writing not less than thirty (30) days prior to the cancellation of any policy. If the cancellation of any policy (including limits or deductible or any other terms under policies for such insurance) ceases to be available on a commercial reasonable basis, the Department and Alpha shall immediately enter into the resolution process as set forth in the Agreement.

EXHIBIT 8
SCHEDULE

Section 2(j)(i)(1) Work
Payment Schedule

<u>Invoice</u>	<u>Invoice Date</u>	<u>Invoice Amount</u>
Invoice 1	10/01/2008	\$ 250,000.00
Invoice 2	11/01/2008	\$ 250,000.00
Invoice 3	12/01/2008	\$ 250,000.00
Invoice 4	01/01/2009	\$ 250,000.00
Invoice 5	02/01/2009	\$ 250,000.00
Invoice 6	03/01/2009	\$ 250,000.00
Total Section 2 (j)(i)(1)		\$1,500,000.00

Section 2(j)(i)(2) Work
Payment Schedule

Invoice Dates represent “no earlier than” billing dates for a completed segment
(Segments 1-4 are 0.25 miles each and Segment 5 is approximately 0.30 mile)

<u>Invoice</u>	<u>Invoice Date</u>	<u>Invoice Amount</u>
Invoice Segment 1	01/01/2009	\$1,700,000.00
Invoice Segment 2	04/01/2009	\$1,700,000.00
Invoice Segment 3	07/01/2009	\$1,700,000.00
Invoice Segment 4	11/01/2009	\$1,700,000.00
Invoice Segment 5	03/31/2010	\$1,700,000.00
Total Section 2 (j)(i)(2)		\$8,500,000.00

EXHIBIT 9
VDOT OVERSIGHT PLAN FOR MINING PERMIT CONDITIONS FOR THE
HAWKS NEST SECTION

1.0 INTRODUCTION

As further referenced in the Second Amendment, Alpha will develop approximately 1.3 miles of roadbed, to rough-grade, on one of Alpha's active mining operations, referred to as the Hawks Nest Surface Mine. Development of the roadbed would require Alpha to obtain a variance from returning the mined area to its approximate original contour and to change the current post-mining land use (PMLU) of unmanaged forest to public use-public road, which is classified as a higher or better use. Because of its size, revising this mining project would actually allow for the development of approximately 2 miles of roadbed. In order to revise the permit to obtain a variance and change the PMLU to public use-public road, Alpha must obtain approval from the Commonwealth's mining regulatory agency, the Division of Mined Land Reclamation (DMLR) of the Department of Mines Minerals and Energy (DMME) which will essentially require VDOT to acknowledge its intent to use the mined area as a roadbed.

2.0 MONITORING

A crucial and integral part of the Second Amendment (Amendment), which is the contractual instrument for development of the 1.3 miles of roadbed (Hawks Nest Section), will focus on VDOT's Oversight Plan for Mining Permit Conditions (Oversight Plan) during the Section's development phase. VDOT's proposed Oversight Plan consists of two distinct components: 1) to observe and document daily activities of the existing mining operation in accordance with the existing mining permit as it relates to achieving its PMLU of roadbed development, and 2) (i) monitor placement of material in accordance with the permit's performance standards, (ii) inspect, document, and enforce the provisions of the Amendment, which includes additional specifications for cut slopes, which are not required as part of the existing mining permit, and (iii) approve design plans, which include the horizontal and vertical alignments and cross sections.

As discussed, the development of the 1.3 miles of roadbed will be in accordance with the Amendment, Project Specifications, design and Construction Documents approved by VDOT and the Mining Permit (Contract Documents). The specifications related specifically to the mining permit requirements will be inspected and enforced by DMLR as required by the Surface Mining Control and Reclamation Act (SMCRA). VDOT will act in the capacity of observing and documenting the activities related to the roadbed development and coordinating those directly with Alpha and DMLR. The Project Specifications for cut slopes required by VDOT that are not included as part of the mining permit conditions and requirements, but included in the Amendment will be inspected and enforced by VDOT.

EXHIBIT 9
VDOT OVERSIGHT PLAN FOR MINING PERMIT CONDITIONS FOR THE
HAWKS NEST SECTION

3.0 MONITORING – INSPECTION PERSONNEL

3.1 Independent Quality Manager (IQM)

This individual, who will be required to be on the Project site for a minimum of one day each week or as required for the current development activities for the duration of operations, shall be responsible for (i) managing the independent monitoring and reporting process for VDOT, and (ii) ensuring the materials used and work performed meet the requirements of the Contract Documents. This individual shall provide written certification (signed and sealed) monthly to the VDOT Project Manager that all work and materials are in compliance with the Contract Documents. The certification to be provided will be independent of all work and materials that is required to be certified by Alpha's design engineer in accordance with the requirements of the mining permit and specifications included in the Amendment. Additionally, this person shall be a qualified Professional Engineer, licensed in the Commonwealth of Virginia, with supervisory experience in the inspection and design of similar type highway transportation construction projects and geological conditions.

3.2 Construction Specialist (Senior)

This individual, who will be required to be on the Project site for a minimum of five days each week or as required for the current development activities for the duration of operations, shall be responsible for monitoring the daily activities to ensure they are in conformance with the Contract Documents. This individual will report directly to the IQM and shall meet the minimum requirements for a VDOT certified Senior Inspector.

3.3 Construction Specialist (Trainee)

This individual shall be responsible for documenting the work performed in accordance with the Contract Documents under the guidance of the Construction Specialist (Senior). This individual will summarize daily development activities in a daily report. The reports will be on a Daily Work Report or a similar form as approved by the VDOT. Copies of the reports and the Construction Specialist (Senior) and Construction Specialist (Trainee) daily records shall be provided weekly to the IQM. The reports shall include the following key points of record:

1. Work performed
2. Weather conditions
3. Inspections performed by Alpha, DMLR, etc.
4. Communications
5. DMLR Inspection Reports (Monthly, Quarterly)
6. Alpha QC Test Reports
7. Signature of Construction Specialists

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4.0 MONITORING – EXISTING PERMIT CONDITIONS AND REQUIREMENTS

There are four major areas of the mining permit that VDOT will be monitoring to ensure the roadbed is developed in conformance with the Contract Documents as discussed below. DMLR will inspect and enforce the four conditions as required by the SMCRA.

4.1 DMLR Inspections and Enforcement

DMLR will conduct an average of one partial inspection per month and one complete inspection per calendar quarter. The partial inspection is an on-site or aerial review of a permittee's compliance with the permit conditions and requirements, as are necessary to ensure effective enforcement of SMCRA. The complete inspection is an on-site review of a permittee's compliance with **all** permit conditions and requirements imposed under the SMCRA. If any violation is observed, a notice of violation (NOV) is issued to the permittee in writing and shall include the remedial action required and the time for abatement. If the permittee fails to abate the NOV, the DMLR may issue a cessation order. If DMLR determines that a pattern of violations exists and that they were caused by the permittee's willful or unwarranted failure to comply with the requirements or conditions then a show cause order will be issued which could result in civil penalties and ultimately suspension or revocation of the permit and the right to mine for the permittee.

The Amendment requires that all inspection documents provided to the permitting agency will also be provided to VDOT for its records. In addition, the Amendment identifies specific actions that must take place, if VDOT observes work in non-conformance with the Contract Documents, and defines who has enforcement authority for the mining permit and specifications.

4.2 Conditions and Requirements

4.2.1 PMLU

As required by the mining permit, all disturbed areas shall be restored in a timely manner to conditions capable of supporting the uses they were capable of supporting before any mining; or higher or better uses. The DMLR may grant a variance from the pre-mining land use if:

1. A higher or better use is proposed;
2. The change in the post-mining land use shall be designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use; and
3. The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted.

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The variance proposed for Hawks Nest Permit is to change the existing PMLU from unmanaged forest to public use-public roads, which constitutes a higher use. The VDOT Construction Specialist (Senior) will have a copy of the PMLU variance approved by DMLR and will conduct daily (5-7 days per week based on the project schedule) monitoring of the approved permit requirement.

4.2.2 Construction of Fills

As required by the permit, all fills shall be designed using current, prudent engineering practices by a qualified registered professional engineer, licensed in the Commonwealth of Virginia, experienced in the design of earth and rock fills. The permit contains the required descriptions, including appropriate maps and cross section drawings of the proposed disposal sites and designs of the fill structures. Foundation investigations and testing of foundation material were performed as part of gaining the approved permit in order to determine the design requirements for foundation stability. Factors and information taken into consideration for fill designs include, but are not limited to:

1. The character of the bedrock and geologic conditions in the disposal area;
2. Surveys for the purpose of identifying all springs, seepage, and ground water flow observed or anticipated during wet periods.
3. A survey of potential effects of subsidence of the subsurface strata due to past and future mining operations.
4. A technical description of the rock material to be utilized in the construction of the rock drainage blanket.
5. A stability analysis including, but not limited to, strength parameters, pore pressures and long term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.
6. The final configuration of the fill shall be suitable for the approved post-mining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved post-mining land use.

All of the permitted fills associated with the development of the roadbed are durable rock fills, which consists of a percentage as outlined below. For the durable rock fills, DMLR approved construction by gravity placement of the material in single or multiple lifts. Approval of the use of durable rock fills was in the approved permit based on complying with the following conditions:

1. The excess spoil consists of at least 80 percent, by volume, durable nonacid- and nontoxic forming rock that does not slake in water and will not degrade to soil material. Where used, non-cemented clay shale, clay spoil, soil or other nondurable excess spoil material shall be mixed with excess durable rock.

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2. A qualified registered professional engineer certifies that the design will ensure the stability of the fill.
3. The fill is designed to attain a minimum long-term static safety factor of 1.5 and an earthquake safety factor of 1.1 against instability of the fill slope.
4. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped material, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and spring in the foundation.
5. Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized channels designed to safely pass the runoff from a 100-year, 6-hour precipitation event.

To address compliance with fill construction requirements, DMLR requires inspections by a qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer periodically during construction. The professional engineer and specialist shall be experienced in the construction of earth and rock fills.

1. Such inspections shall be made quarterly throughout construction and during critical construction periods which include at a minimum: foundation preparation, removal of organic material and topsoil, placement of underdrains, installation of final surface drainage systems and the final graded and revegetated fill. Regular inspection by the engineer or specialist shall also be conducted during placement and compaction of fill materials.
2. The registered professional engineer shall provide a certified report to the division within two weeks after each inspection that the fill has been constructed and maintained as designed in accordance with the approved plan in the permit.
3. The certified report on the drainage system shall include color photographs taken during and after construction, but before underdrains are covered.
4. A copy of each inspection report shall be retained at or near the mine site.

The VDOT Construction Specialist (Senior) will have a copy of the approved fill designs in the mining permit related to the roadbed development. The Construction Specialist (Senior) will conduct daily (5-7 days per week based on the project schedule) monitoring of the approved fill construction requirements and will also obtain copies of all certified inspection reports submitted by the professional engineer to DMLR for VDOT's files.

4.2.3 Revegetation Requirements

The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the post-mining land use, a vegetative cover in accordance with the approved permit and reclamation plan and

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as per 4VAC 25-130-816.116. The approved plan shall include the schedule of revegetation, species and amounts per acre of seeds and seedlings to be used, methods to be utilized in planting and seeding, mulching techniques, measures proposed to be used to determine success of revegetation, and a soil testing plan for evaluating the results of topsoil handling and reclamation procedures.

1. The success of revegetation shall be judged on the effectiveness of the vegetation for the approved post-mining land use, the extent of cover compared to the cover occurring in natural vegetation of the area.
2. Standards for success shall be applied in accordance with the approved post-mining land use.
3. The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work. The period shall continue for a period of not less than five years unless approved by DMLR.

The VDOT Construction Specialist (Senior) will have a copy of the approved revegetation plans in the mining permit related to the roadbed development. The Construction Specialist (Senior) will conduct daily (5-7 days per week based on the project schedule) monitoring of the approved revegetation requirements and will defer to the success standards and period of extended responsibility of DMLR for successful revegetation, which far exceeds the 1 year warranty that VDOT usually requires. The Construction Specialist (Senior) will submit written reports for VDOT's files.

4.2.4 Erosion and Sediment Control

The Erosion and Sediment Control Plan shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, with assistance from experts in related fields. Appropriate erosion and sediment control shall be designed, constructed, and maintained using the best technology currently available to:

1. Prevent, to the extent possible as per 4VAC 25-130-816.45, additional contributions of sediment to stream flow or to runoff outside the permit area.
2. Meet the more stringent of applicable State or Federal effluent limitations for Coal Mining promulgated by the U.S. Environmental Protection Agency.
3. Minimize erosion to the extent possible as per 4VAC 25-130-816.45.
4. The design of sediment ponds for erosion and sediment control shall be certified by a qualified registered professional engineer as designed to meet the requirements of the SMCRA. Inspections shall be made regularly during construction, upon completion and at least yearly until removal of the structure or release of the performance bond. Within two weeks of the inspection, the registered professional engineer shall provide a certified report to the DMLR that the pond was constructed and/or maintained in accordance with the approved permit.

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The VDOT Construction Specialist (Senior) will have a copy of the approved erosion and sediment control designs in the mining permit related to the roadbed development. The Construction Specialist (Senior) will conduct daily (5-7 days per week based on the project schedule) monitoring of the approved development and maintenance requirements and will also obtain copies of all certified inspection reports submitted by the professional engineer to the DMLR for VDOT's files.

5.0 INSPECTION – CONDITIONS AND REQUIREMENTS IN THE AMENDMENT

Construction Specification required by VDOT, as set forth in the Contract Documents, will be inspected, documented and enforced by VDOT's Construction Specialist (Senior) under the Amendment.

6.0 PERFORMANCE MONITORING

Significant long-term subsidence of the durable rock fill embankments to be constructed in accordance with the Contract Documents is not anticipated to pose an impact to the performance of the future roadway to be supported on the fill based on the performance of similar rock fill of comparable size that were constructed utilizing these same design and construction techniques. To verify that the fill embankments will perform as anticipated, VDOT will develop and install a settlement monitoring program in coordination with Alpha shortly after construction of the fill embankments are completed. . The monitoring program will consist of a series of settlement monitoring monuments(SMM) installed at the top of the fill and in the area of the proposed roadway prism to measure actual performance of the embankments. The number and location of the settlement monitoring monuments will be determined once the anticipated roadway alignment has been determined and based on the results of monitoring during fill placement. VDOT will be responsible for the installation, monitoring and evaluation of the entire settlement monitoring program. In order to determine and verify that the settlement of the embankment fill has essentially ceased and the embankment is adequate for construction of the roadway, the monitoring program will occur during the one (1) year warranty period at a frequency deemed appropriate by VDOT and FHWA. After this period, the monitoring program will continue at a lesser modified frequency as deemed appropriate by VDOT and FHWA.

The SMM shall consist of at least a 3.5-foot long steel reinforcing rod (minimum No 5 diameter), meeting the requirements of VDOT Specification, Section 230, centered in a 6-inch diameter, 3-foot deep hole filled with Class 20 Cement Concrete, meeting the requirements of VDOT Specification, Section 217. The rod shall be installed so that one end is at the bottom of the hole and the other is a nominal 6 inches above the ground surface (or rough grade). At all times the SMM's shall be marked or flagged adequately to prevent damage from mining equipment. A 3-ft high fluorescent, plastic mesh fence will be installed at a 2.5-foot radius around the SMMs. In the event an SMM is damaged

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or vandalized, VDOT will replace or repair the monument to the extent necessary to accurately continue monitoring.

If the monitoring program finds movement that is detrimental to the integrity and stability of the fill slopes during the monitoring period, VDOT will follow the resolution process as set forth in the Contract Documents.