

EXHIBIT B

PROPOSAL COMMITMENTS

[TO BE FURNISHED BY CONCESSIONAIRE]

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

EXHIBIT C – INTENTIONALLY OMITTED

EXHIBIT D – INTENTIONALLY OMITTED

EXHIBIT E

DEPARTMENT’S REIMBURSABLE COSTS AND PERMIT FEES

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

Part A Department’s Initial Reimbursable Cost

1. Concurrently with the Agreement Date, the Concessionaire shall pay to the Department, in good and immediately available funds, \$_____ (the “Department’s Initial Reimbursable Cost”). Failure to pay when due shall constitute a material the Concessionaire Default.
2. The foregoing Department’s Initial Reimbursable Cost consists of two components, as follows:
 - 2.1 \$_____, as reimbursement in full for the Department’s costs of procuring this Agreement; and
 - 2.2 An additional \$_____, equal to the balance, as compensation in full for the cost of Department’s Oversight Services from and including the Agreement Date through December 31, 2010. This payment does not include compensation otherwise due to the Department under the Agreement, including the following: (a) any increase in the Department’s Allocable Costs of Oversight Services arising out of a Concessionaire Default, (b) any increase in the Department’s Allocable Costs of Oversight Services arising out of an election to increase monitoring pursuant to Section 10.03 or Section 11.06(a) of the Agreement, (c) the Department’s Allocable Costs of Oversight Services relating to or arising out of Safety Compliance Orders, Concessionaire Project Enhancements or Change Orders requested by the Concessionaire, (d) any activities of the Department which are not Oversight Services and for which it is entitled to reimbursement of Allocable Costs under the Agreement, pursuant to Sections 8.05(g) and 8.07(d), and (e) the Department’s reimbursable costs for the services of the Independent Engineer under the Independent Engineer Agreement.

Part B Department’s Annual Reimbursable Cost

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

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

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

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

Part C Permit Fee

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

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

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

EXHIBIT F

FINANCIAL PLAN MEMORANDUM

[TO BE PROVIDED BY CONCESSIONAIRE]

EXHIBIT G

FORM OF PERFORMANCE SECURITY

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

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

APPLICANT: [Concessionaire]

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

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

STATED AMOUNT: US\$125,000,000

EXPIRATION DATE:

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

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

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

or

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

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

or

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

All drafts will be honored if presented to _____ (Bank or branch – name & address) _____ on or before _____ (Expiration Date) _____ or any extended expiration date. Drawings by facsimile to facsimile number () _____ and by e-mail to e-mail address _____ are acceptable (each such drawing, a "Remote Drawing") provided, however, that a Remote Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Remote Drawing by calling Issuer at telephone number () _____. Issuer will acknowledge Beneficiary's presentment by e-mail to the e-mail address provided to Issuer in the Remote Drawing.

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

Issuer:

By: _____ (Authorized signature of Issuer) _____

EXHIBIT G-1

FORM OF O & M SECURITY

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

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

APPLICANT: [Concessionaire]

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

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

STATED AMOUNT: US\$_____

EXPIRATION DATE:

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

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

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

or

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

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

or

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

All drafts will be honored if presented to _____ (Bank or branch – name & address) _____ on or before _____ (Expiration Date) _____ or any extended expiration date. Drawings by facsimile to facsimile number () _____ and by e-mail to e-mail address _____ are acceptable (each such drawing, a "Remote Drawing") provided, however, that a Remote Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Remote Drawing by calling Issuer at telephone number () _____. Issuer will acknowledge Beneficiary's presentment by e-mail to the e-mail address provided to Issuer in the Remote Drawing.

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

Issuer:

By: _____ (Authorized signature of Issuer) _____

EXHIBIT H

PERFORMANCE POINTS TABLE

Introduction

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

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

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

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

Table 1 Performance Points during the Work Period						
Heading	Ref	§ Ref	Breaches or Failures to Perform	Category	Cure Period	Max Points
	W 13.2	Technical Requirements § 1.4	The Concessionaire makes significant alterations to the Baseline Schedule, without informing the Department or seeking approval from the Department, as applicable.	C	None	4
	W 13.3	Technical Requirements § 1.4	The Concessionaire fails to correct items of non-concurrence from the Department in Baseline Schedule updates.	A	14 Days	1
W14 Public Information	W 14.1	Agreement § 8.09	The Concessionaire fails to provide public information in accordance with the approved Public Information and Communications Plan.	B	2 days	4
	W 14.2	Technical Requirements § 2.4	The Concessionaire fails to comply with the requirements of the Public Information and Communications Plan.	A	7 Days	1
W15 Right of Way	W 15.1	Technical Requirements § 1.6	The Concessionaire fails to submit a Right of Way Acquisition Plan that meets the standards set forth in, and by the timeframe required by, the Technical Requirements.	B	14 Days	3
	W 15.2	Technical Requirements § 1.6	The Concessionaire fails to adhere to the Right of Way Acquisition Plan in performing Right of Way acquisition services.	C	None	3
W16 Work Restrictions	W 16.1	Technical Requirements § 1.8	The Concessionaire conducts Work in contravention of any working hour restrictions set forth in the Technical Requirements.	C	None	3
W17 MOT	W 17.1	Technical Requirements § 1.9	The Concessionaire conducts MOT operations in violation of the standards and specifications set forth in the Technical Requirements.	D	None	3
W18 Construction Health and Safety Standards	W 18.1	Technical Requirements § 1.13	The Concessionaire is found to be in violation of the Virginia Occupational Health and Safety adopted under the Code of Virginia.	D	None	2
W19 Security	W 19.1	Technical Requirements § 3.12	The Concessionaire fails to adhere to requirements regarding the protection and control of Critical Infrastructure Information and Sensitive Security Information, pursuant to the Technical Requirements.	B	21 Days	2

Table 2 – The Operating Period

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

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

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

Table 2 Performance Points during the Operating Period						
Heading	Ref	§ Ref	Breaches or failures to conform	Category	Cure Period	Max Points
	O 11.2	Agreement § 9.05(c)	The Concessionaire fails to submit to the Department estimated costs for Tasks as part of its Life Cycle Maintenance Plan at least 90 Days prior to the start of each calendar year.	B	7 Days	1
O12 Operations	O 12.1	Technical Requirements § 4.15	The Concessionaire fails to ensure that dynamic message signs present accurate tolling and travel information at all times.	C	None	1
	O 12.3	Technical Requirements § 1.9.1.2	The Concessionaire fails to meet requirements of I&M 241, or update thereof, relative to work zone safety, management, Maintenance of Traffic and diversion routes for regular maintenance during operations.	D	None	2
O13 Financial	O 13.1	Agreement § 6.02(b)	The Concessionaire fails to deliver to the Department (following an update to the Base Case Financial Model) an update of the Financial Model within the timeframes required by the Agreement.	B	14 Days	2
	O 13.2	Agreement § 7.07 (a)	The Concessionaire fails to provide the Department with written notice of any proposed Refinancing at least 30 Days prior to the proposed date of closing of the Refinancing along with supporting documents as stated in the agreement.	B	7 Days	2
O14 Tolling	O 14.1	Agreement § 5.01	The Concessionaire is found to be in violation of the Agreement in applicable Law regarding the application of toll rates to like vehicles.	D	None	5
Tolling	O 14.2	Agreement § 5.02(d)	The Concessionaire fails to notify the Department of toll rates charged to every category of user.	B	14 Days	2
Tolling	O 14.3	Technical Requirements § 5.5.2.3	The Concessionaire transmits duplicate transactions or incorrect toll amounts to the Customer Service Center (to be determined on a per transmission basis).	C	None	5
Tolling	O 14.4	Agreement § 5.05	The Concessionaire fails to comply with its obligations to suspend the collection of tolls in accordance with the Agreement.	D	None	5
Tolling	O 14.5	Technical Requirements § 5.5.2.3	The Concessionaire fails to reconcile or audit the data transmission within 3 Business Days of notification of duplicate transactions or incorrect toll charges (determined on a per transmission basis).	A	1 Day	5

Table 2 Performance Points during the Operating Period

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

EXHIBIT I

FEDERAL REQUIREMENTS

<u>Exhibit Description</u>	<u>No. of Pages</u>
Attachment 1 – Federal Provisions	2
Attachment 2 – FHWA Form 1273	25
Attachment 3 – Wage Determination of the Secretary of Labor	12
Attachment 4 – Special Provision for Notice of Requirement for Affirmative Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	8
Attachment 5 – Debarment and Suspension Certification	1
Attachment 6 – Lobbying Certification	2
Attachment 7 – Compliance with Section 1604(b)(3) of SAFETEA-LU	2
Attachment 8 – Compliance with Buy America Requirements	2

ATTACHMENT 1 TO EXHIBIT I

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION FACILITIES

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

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

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

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

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

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

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

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

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by,

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

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

CONVICT PRODUCED MATERIALS

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

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

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

ACCESS TO RECORDS

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

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

ATTACHMENT 2 TO EXHIBIT I

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA FORM 1273

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I. GENERAL

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

II. NONDISCRIMINATION

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

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

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

- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

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

6. Training and Promotion:

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

- 7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

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

- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

- 9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
 - i. The number of minority and non-minority group members and women employed in each work classification on the project;
 - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
 - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

- 1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- 2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit

directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the

time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - i. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - ii. the additional classification is utilized in the area by the construction industry;
 - iii. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - iv. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour

Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

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

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

- a. Apprentices:
 - i. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
 - ii. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the

applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

- iii. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- i. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the

job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

- iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- iv In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. **Helpers:** Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

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

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

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to

pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

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

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3)

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

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - i. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - ii. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 - iii. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

- 1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

- a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
 - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services)

as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

- *"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*
- *Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

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

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

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

1. Instructions for Certification - Primary Covered Transactions

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

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

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

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or

- a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
3. Instructions for Certification - Lower Tier Covered Transactions:
- (Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)
- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
 - b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
 - d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
 - e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who

is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT 3 TO EXHIBIT I

FEDERAL PREVAILING WAGE RATE

(Subject to change)

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

GENERAL DECISION: VA20080009 05/16/2008 VA9

Date: May 16, 2008

General Decision Number: VA20080009 05/16/2008

Superseded General Decision Number: VA20070009

State: Virginia

Construction Type: Highway

Counties: Chesapeake*, Isle of Wight, Norfolk*, Portsmouth*,Suffolk* and Virginia Beach*
Counties in Virginia.

*INDEPENDENT CITIES

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

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

* ELEC0080-001 03/01/2008

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

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

* ENGI0147-013 05/01/2008

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

SUVA1999-012 02/09/1999

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator	\$ 7.97	
BLASTER.....	\$ 9.00	
Carpenters Structure.....	\$ 12.66	
Concrete Finisher.....	\$ 10.53	
Deckhand.....	\$13.49	
FENCE ERECTOR.....	\$ 9.50	
Flagger.....	\$ 7.22	
Form Setter.....	\$ 9.75	
Guardrail erector.....	\$ 14.13	
Laborers:		
Asphalt Rakers.....	\$ 8.27	
Construction Workers I (Skilled Laborers)	\$ 8.80	
Construction Workers II (Laborers).....	\$ 7.68	
Landscape Workers	\$ 7.92	
Pipelayers	\$ 8.05	
Power Tool Operators.....	\$ 9.26	
MASON		
Structure.....	\$ 9.00	
Painter, Bridge	\$ 13.08	
PAINTER	\$ 13.90	

Power equipment operators:

Air Compressor Operators	\$ 20.00
Asphalt Distributor Operators	\$ 9.14
Asphalt Paver Operators	\$ 9.74
Backhoe Operators	\$ 11.74
Bulldozer Operators, Utility	\$ 10.06
Bulldozer Operators	\$ 10.33
Concrete Finish Machine Operators, Utility.....	\$ 11.32
Concrete Finish Machine/Screed Operators (Bridge)	\$ 14.00
Concrete Paving Machine Operators	\$ 9.16
Concrete Pump Operators	\$ 16.01
Concrete Saw Operators.....	\$ 16.01
Crusher Tender Operators	\$ 10.35
Drill Operators	\$ 10.00
Excavator Operators (Gradall Operators)	\$ 11.86
Front-End Loader Operators	\$ 9.35
Fuel and Lubricant Service Truck Drivers	\$ 7.23
Grade Checkers	\$ 7.22
Hydro-Seeder Operators	\$ 10.75
Log Skidder Operators	\$ 15.00
Mechanics	\$ 11.89
Mobile Mixer Operators.....	\$ 10.71
Motor Grader Operators	
Fine Grade	\$ 11.61
Rough Grade.....	\$ 11.87
Oiler Greasers.....	\$ 10.50
Pavement Marker Operators.....	\$ 10.20
Pavement Marking Truck Operators	\$ 8.75
Pavement Planning	
Groundman	\$ 11.00
Operators	\$ 10.25
Pile Driver Operators.....	\$ 14.50
Pipe Boring/Jacking Machine Operators.....	\$ 8.38
Plant Operators	\$ 10.00
Roller Operators	
Finish.....	\$ 9.68
Rough.....	\$ 8.66
Scraper Pan Operators	\$ 9.50
Shot Blast Machine Operators	\$ 7.75
Shovel Operators	\$ 10.45
Slip-Form Paver Operators	\$ 10.82
Slurry Seal Paver	
Machine Operators.....	\$ 9.38
Truck Drivers.....	\$ 9.00
Stabilizer Operators	\$ 7.94
Stone Spreader Operators	\$ 10.90
Subgrade Machine Operators	\$ 8.75
Tractor Operators	
Crawlers	\$ 8.02
Utility	\$ 9.16
Transit Mix Truck Drivers	\$ 9.75

Trenching Machine Operators.....	\$ 10.66
Reinforcing metal workers	\$ 21.20
Sheet Metal Worker	\$ 8.90
SIGN ERECTOR.....	\$ 17.25
Structural workers	\$ 16.70
Truck drivers:	
Heavy Duty	
Over 7 c.y.....	\$ 11.03
Under 7 c.y.....	\$ 10.93
Multi, Tandem and Single Rear Axle.....	\$ 8.14
Welder.....	\$ 12.99

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

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

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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GENERAL DECISION: VA20080011 01/25/2008 VA11

Date: February 8, 2008

General Decision Number: VA20080011 02/08/2008

Superseded General Decision Number: VA20070011

State: Virginia

Construction Type: Highway

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

*INDEPENDENT CITIES

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

Modification Number	Publication Date
0	02/08/2008

* ELEC0666-008 12/01/2007

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

* SUVA1999-011 02/11/1999

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator	\$ 10.10	
BLASTER.....	\$ 10.47	
Carpenters Structure.....	\$ 11.31	
Concrete Finisher.....	\$ 11.24	
Deckhand.....	\$ 8.62	

FENCE ERECTOR	\$ 9.65
Flagger	\$ 8.71
Form Setter	\$ 9.56
Guardrail erector	\$ 9.51
Laborers:	
Asphalt Rakers	\$ 9.79
Construction Workers I (Skilled Laborers)	\$ 9.50
Construction Workers II (Laborers)	\$ 7.83
Landscape Workers	\$ 7.42
Pipelayers	\$ 9.22
Power Tool Operators	\$ 8.50
MASON	
Structure.....	\$ 10.00
Painter, Bridge	\$ 13.57
Painters	\$ 10.00
Plumbers	\$ 14.31
Power equipment operators:	
Air Compressor Operators	\$ 20.00
Asphalt Distributor Operators	\$ 10.38
Asphalt Paver Operators	\$ 9.71
Backhoe Operators	\$ 11.29
Bulldozer Operators, Utility	\$ 10.31
Bulldozer Operators	\$ 10.58
Concrete Finish Machine Operators, Utility.....	\$ 11.04
Concrete Finish Machine/Screed Operators (Bridge)	\$ 12.30
Concrete Paving Machine Operators	\$ 12.15
Concrete Pump Operators	\$ 8.33
Concrete Saw Operators.....	\$ 8.25
Crane, Derrick, Dragline Operators	
1 yd. & under	\$ 12.25
Over 1 yd.....	\$ 13.28
Crusher Tender Operators	\$ 10.35
Drill Operators	\$ 9.13
Excavator Operators (Gradall Operators)	\$ 11.82
Front-End Loader Operators	\$ 10.37
Fuel and Lubricant Service Truck Drivers	\$ 10.25
Grade Checkers	\$ 7.28
Hydro-Seeder Operators	\$ 12.72
Log Skidder Operators	\$ 15.00
Mechanics	\$ 13.46
Mobile Mixer Operators.....	\$ 10.71
Motor Grader Operators	

Fine Grade	\$ 12.50
Rough Grade.....	\$ 11.61
Pavement Marker Operators.....	\$ 9.93
Pavement Marking Truck Operators	\$ 10.86
Pavement Planning	
Groundman	\$ 8.93
Operators	\$ 10.49
Pile Driver	
Leadsman	\$ 10.65
Operators	\$ 11.54
Pipe Boring/Jacking Machine Operators.....	\$ 8.38
Plant Operators	\$ 18.75
Roller Operators	
Finish.....	\$ 9.75
Rough.....	\$ 8.56
Scraper Pan Operators	\$ 9.82
Shot Blast Machine Operators	\$ 7.75
Shovel Operators	\$ 10.45
Slip-Form Paver Operators	\$ 12.85
Slurry Seal Paver	
Machine Operators.....	\$ 9.38
Truck Drivers.....	\$ 9.00
Stabilizer Operators	\$ 9.70
Stone Spreader Operators	\$ 10.83
Subgrade Machine Operators	\$ 11.25
Tractor Operators	
Crawlers	\$ 8.02
Utility	\$ 9.67
Transit Mix Truck Drivers	\$ 12.50
Trenching Machine Operators.....	\$ 10.46
Vacuum Machine Operators	\$ 9.25
Reinforcing metal workers	\$ 13.94
Sheet Metal Worker	\$ 8.90
SIGN ERECTOR.....	\$ 8.90
Structural workers	\$ 15.96
Truck drivers:	
Heavy Duty.....	\$ 9.11
Multi, Tandem and Single Rear Axle.....	\$ 8.89
WATER PROOFER	\$ 7.28
Welder.....	\$ 12.99

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

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

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

GENERAL DECISION: VA20080016 07/25/2008 VA16

Date: July 25, 2008

General Decision Number: VA20080016 07/25/2008

Superseded General Decision Number: VA20070016

State: Virginia

Construction Type: Highway

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

*INDEPENDENT CITIES

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

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

* SUVA1996-010 09/24/1996

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator	\$ 10.10	
BLASTER.....	\$ 10.55	
Carpenters:		
Structure.....	\$ 11.52	
Concrete Finisher.....	\$ 10.41	
Deckhand.....	\$ 13.49	
Electricians.....	\$ 19.51	
FENCE ERECTOR	\$ 9.08	
Flagger.....	\$ 9.80	
Form Setter	\$ 10.39	

Guardrail erector \$ 7.81

Laborers:

Asphalt Rakers \$ 9.10
 Construction Workers I (Skilled Laborers) \$ 8.07
 Construction Workers II (Laborers) \$ 7.64
 Landscape Workers \$ 6.55
 Masons, Structure \$ 9.00
 Pipelayers \$ 7.92
 Power Tool Operators \$ 8.09

MASON

Structure \$ 9.00

Painter, Bridge \$ 17.50

PAINTER \$ 9.00

Plumbers \$ 14.31

Power equipment operators:

Air Compressor Operators \$ 10.15
 Asphalt Distributor Operators \$ 9.32
 Asphalt Paver Operators \$ 9.83
 Backhoe Operators \$ 9.59
 Bulldozer Operators, Utility \$ 9.00
 Bulldozer Operators \$ 10.56
 Concrete Finish Machine Operators, Utility \$ 9.75
 Concrete Finish Machine/Screed Operators (Bridge) \$ 13.00
 Concrete Paving Machine Operators \$ 11.00
 Concrete Pump Operators \$ 8.33
 Concrete Saw Operators \$ 8.06
 Crane, Derrick, Dragline Operators
 1 yd. and under \$ 13.34
 Over 1 yd. \$ 13.51
 Crusher Tender Operators \$ 10.35
 Drill Operators \$ 8.50
 Excavator Operators \$ 10.01
 Front-End Loader Operators
 2 yds. and under \$ 9.25
 Over 2 yds. \$ 10.03
 Fuel and Lubricant Service Truck Drivers \$ 9.00
 Gradall Operators \$ 9.64
 Grade Checkers \$ 7.33
 Hydro-Seeder Operators \$ 12.07
 Log Skidder Operators \$ 15.00
 Mechanics \$ 12.06
 Mobile Mixer Operators \$ 10.51
 Motor Grader Operators
 Fine Grade \$ 12.18
 Rough Grade \$ 10.97

Oiler Greaser.....	\$ 10.00
Pavement Marker Operators.....	\$ 9.09
Pavement Marking Truck Operators	\$ 8.89
Pavement Planning	
Groundmen	\$ 8.00
Operators	\$ 8.80
Pile Driver	
Leadsman	\$ 11.65
Operators	\$ 12.50
Pipe Boring/Jacking Machine Operators.....	\$ 8.38
Plant Operators.....	\$ 10.00
Roller Operators	
Finish.....	\$ 8.61
Rough.....	\$ 8.35
Scraper Pan Operators	\$ 9.38
Shot Blast Machine Operators	\$ 10.00
Shovel Operators	\$ 10.35
Slip-Form Paver Operators	\$ 9.50
Slurry Seal Paver	
Machine Operators.....	\$ 9.38
Truck Drivers.....	\$ 9.00
Stabilizer Operators	\$ 8.32
Stone Spreader Operators.....	\$ 8.69
Subgrade Machine Operators	\$ 8.80
Tractor Operators	
Crawlers	\$ 7.25
Utility	\$ 7.29
Transit Mix Truck Drivers	\$ 9.75
Trenching Machine Operators.....	\$ 10.13
Vacuum Machine Operators	\$ 10.00
Reinforcing metal workers	\$ 14.78
Sheet Metal Worker	\$ 14.00
SIGN ERECTOR.....	\$ 11.13
Structural workers	\$ 14.00
TRAFFIC SIGNALIZATION:	
Traffic Signal Installation	
Maintainers.....	\$ 16.00
Truck drivers:	
Heavy Duty	
Over 7 c.y.....	\$ 9.18
Under 7 c.y.....	\$ 8.68
Multi-Tandem Single Rear Axle	\$ 8.17
WATER PROOFER	\$ 8.00

Welder..... \$ 14.00

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

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

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U.S. Department of Labor
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Washington, DC 20210

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END OF GENERAL DECISION.

ATTACHMENT 4 TO EXHIBIT I

SF030AF-0702

Reissued July 9, 2002

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

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

Females - 6.9%
Minorities - See Attachment "A"

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

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

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

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

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

an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

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

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

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

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

ATTACHMENT A

Economic Area	Goal (Percent)
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg.	
6800 Roanoke, VA.....	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties.	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll; VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland; VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski; VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista; VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg; VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton.	
022 Richmond, VA:	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA.....	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg.	
6760 Richmond, VA.....	24.9
VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.	
Non-SMSA Counties	27.9
VA Albermarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023 Norfolk - Virginia Beach - Newport News VA:	
SMSA Counties:	
5680 Newport News- Hampton, VA	27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.	
5720 Norfolk - Virginia Beach - Portsmouth, VA - NC	26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.	
Non-SMSA Counties	29.7
NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin.	
Washington, DC:	
020 Washington, DC.	
SMSA Counties:	
8840 Washington, DC - MD - VA	28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William	

VA Alexandria; VA Fairfax City; VA Falls Church.	
Non- SMSA Counties	25.2
MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spottsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
Tennessee:	
052 Johnson City - Kingsport - Bristol, TN - VA	
SMSA Counties:	
3630 Johnson City - Kingsport -Bristol, TN-VA	2.6
TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA Scott; VA Washington;VA Bristol.	
Non-SMSA Counties	3.2
TN Greene; TN Johnson; VA Buchanan;VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.	
Maryland	
019 Baltimore MD:	
Non-SMSA Counties	23.6
MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.	

ATTACHMENT 5 TO EXHIBIT I

DEBARMENT AND SUSPENSION CERTIFICATION

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

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

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

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

ATTACHMENT 6 TO EXHIBIT I

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

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

ATTACHMENT 7 TO EXHIBIT I

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

1. Certification of Adequate Maintenance

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

2. Annual Audit of Records

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

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

ATTACHMENT 8 TO EXHIBIT I

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

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

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

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

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

BUY AMERICA CERTIFICATE

CERTIFICATE OF COMPLIANCE

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

Date: _____

Signature: _____

Concessionaire's Name: _____

Title: _____

Or

Certificate for Noncompliance

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

Date: _____

Signature: _____

Concessionaire's Name: _____

Title: _____

EXHIBIT J

EMPLOYMENT RELATED MATTERS

1. Labor and Wages

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

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

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

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

2. Equal Employment Opportunity

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

- record of all applicants for employment
- new hires by race, work classification, hourly rate, and date employed
- minority and non-minority employees employed in each work classification

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

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

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

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

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

- (d) Dissemination of Policy:

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

- a. Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and at least once every 6 months thereafter, at which time the Concessionaire's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.
- b. New supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or

another knowledgeable company official covering all major aspects of the Concessionaire's EEO obligations within 30 days following their reporting for duty with the Concessionaire.

- c. The EEO Officer or appropriate company official shall instruct employees engaged in the direct recruitment of employees for the project relative to the methods followed by the Concessionaire in locating and hiring minority group employees.
2. In order to make the Concessionaire's EEO policy known to all employees, prospective employees, and potential sources of employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Concessionaire shall take the following actions:
 - a. Notices and posters setting forth the Concessionaire's EEO policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.

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

- b. The Concessionaire's EEO policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
- (e) Recruitment:
1. When advertising for employees, the Concessionaire shall include in all advertisements for employees the notation "An Equal Opportunity Employer" and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
 2. Unless precluded by a valid bargaining agreement, the Concessionaire shall conduct systematic and direct recruitment

through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, state employment agencies, schools, colleges, and minority group organizations. The Concessionaire shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to it for employment consideration.

3. The Concessionaire shall encourage its employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.
- (f) Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.
1. The Concessionaire shall conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of personnel.
 2. The Concessionaire shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.
 3. The Concessionaire shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Concessionaire shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected persons.
 4. The Concessionaire shall investigate all complaints of alleged discrimination made to it in connection with obligations under the Agreement, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, corrective action shall include those persons. Upon completion of each investigation, the Concessionaire shall inform every complainant of all avenues of appeal.
- (g) Training:
1. The Concessionaire shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.
 2. Consistent with work force requirements and as permissible under federal and state regulations, the Concessionaire shall make full

use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of Agreement performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

3. The Concessionaire shall advise employees and applicants for employment of available training programs and the entrance requirements for each.
 4. The Concessionaire shall periodically review the training and promotion potential of minority group employees and shall encourage eligible employees to apply for such training and promotion.
 5. If the Agreement provides a pay item for trainees, training shall be in accordance with the requirements of Section 518 of the *2007 Road and Bridge Specification*.
- (h) Unions: If the Concessionaire relies in whole or in part on unions as a source of employees, best efforts shall be made to obtain the cooperation of such unions to increase opportunities for minority groups and women in the unions and to effect referrals by such unions of minority and women employees. Actions by the Concessionaire, either directly or through its agents or subcontractors, shall include the following procedures:
1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.
 2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions shall be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.
 3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Concessionaire, the Concessionaire shall so certify to the Department and shall set forth what efforts he made to obtain the information.
 4. If a union is unable to provide the Concessionaire with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Concessionaire shall, through its recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group persons and women. If union referral practice prevents the

Concessionaire from complying with the EEO requirements, the Concessionaire shall immediately notify the Department.

(i) Subcontracting: The Concessionaire shall use best efforts to use minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Concessionaires shall obtain lists of MBE, DBE, and WBE construction firms from the Department. If MBE, DBE, or WBE goals are established in the proposal, the Concessionaire shall comply with the requirements of Section 3 of this Exhibit. The Concessionaire shall use best efforts to ensure subcontractor compliance with its EEO obligations.

1. Records and Reports: The Concessionaire shall keep such records as are necessary to determine compliance with its EEO obligations. The records shall be designed to indicate the following:

i. the number of minority and nonminority group members and females employed in each work classification on the project

ii. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and females if unions are used as a source of the work force

iii. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees

iv. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees

2. Records shall be retained for a period of three years following completion of the work and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

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

3. Use of Minority Business Enterprises (MBEs)

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

4. **Civil Rights**

- (a) **DBE-SWAM Forms:** The Concessionaire shall complete the following forms as part of its compliance with the DBE-SWAM goals set forth in the Agreement.
- Form C-111 (Minimum DBE Requirements)
 - Form C-112 (Certification Of Binding Agreement)
 - Form C-48 (Subcontractor/Supplier Solicitation And Utilization Form)
 - Form C-49 (DBE Good Faith Efforts Documentation)
- (b) **On-the-Job Training Forms:** The Concessionaire shall comply with the Special Provision Copied Note for Section 518 of the *2007 Road and Bridge Specifications*.
- (c) **Design Requirements and Submittals:** Payments made to DBE and SWAM consultants must be submitted on form C-63 (DBE Activity Report) on a quarterly basis. Form C-63 and submittal information for the form is set forth in the Department's Construction Directive Memorandum CD-2007-6.
- (d) **Construction Requirements and Submittals:**
1. **EEO Contract Compliance:**
 - i. The following forms and associated submittal information are required from the Design-Build Contractor and its subcontractors (including haulers and suppliers as applicable).
 - Form C-64 (Company Employment)
 - Letter Designating EEO Officer
 - Semi-annual Minutes of an EEO Meeting
 - Form C-57 (Project Employment)
 - ii. The Design-Build Contractor and its subcontractors are subject to formal Department EEO Contractor Compliance Reviews at least annually.

2. Labor Compliance: The Concessionaire shall submit, or cause the submission, of the following. In addition, the Concessionaire's employees (and the employees of its subcontractors) may be subject to interviews by the Department.
 - i. weekly payrolls from the Design-Build Contractor and its subcontractors and haulers;
 - ii. Form C-28 (Basic Hourly Rates paid by Contractor); and
 - iii. Form C-56 (Statement of Compliance).
3. DBE Compliance:
 - i. DBE subcontractors, suppliers, manufacturers and haulers must be listed and submitted on Form C-111, indicating the task(s) assigned and the approximate dollar value of the planned work pursuant to "Special Provision for Section 107.15" dated January 17, 2008.
 - ii. Payments made to DBE firms must be submitted on form C-63 on a quarterly basis. Form C-63 and submittal information for the form is provided in the Department's Construction Directive Memorandum CD-2007-6 included in Attachment 5.
 - iii. All DBE firms are subject to formal DBE contract compliance reviews at least once during active participation on the project.
 - iv. "Special Provision for Section 107.15" dated January 17, 2008, provides guidance on removal of a DBE firm from the contract or for substituting another firm for all or portions of items of work designated to be performed by a DBE firm. Advance approval must be obtained from the district Civil Rights office.
4. SWAM Compliance:
 - i. SWAM subcontractors, suppliers, manufacturers and haulers should be listed and submitted on Form C-111, indicating the task(s) assigned and the approximate dollar value of the planned work. See "Special Provision for Section 107.15" dated January 17, 2008.
 - ii. Payments made to SWAM firms must be submitted on form C-63 on a quarterly basis in order to receive credit. See Construction Memorandum CD-2007-6.
5. On-the-Job Training Compliance (applicable only during the Work Period):

- i. This project has been assigned a goal of six (6) trainees, as indicated in the Special Provision for Section 518 of the 2007 Road and Bridge Specifications.
- ii. Upon notification of intent to assign employees into an approved program, the Department's Civil Rights office will provide Form C-65, which initiates the training process. The Concessionaire is responsible for submitting the completed form for approval by the District Civil Rights Manager ("DCRM").
- iii. Trainees may be current employees, newly hired employees, or individuals from the Business Opportunity and Workforce Development ("BOWD") Center. The BOWD Center is a Department developmental supportive services program and partnering initiative funded by FHWA for selected DBE firms of various skill and competence levels interested in entering, enhancing, or expanding highway contracting opportunities with prime contractors/consultants. The partnering initiative between prime contractors/consultants and BOWD Center DBE firms provides the opportunity for the further development of DBE firms through performance on contracts and guidance from prime contractors/consultants. The intent of this partnering initiative is to increase capacity by perfecting existing skills and knowledge, expanding into new work areas, and prime contractor/consultant joint venturing with DBE firms. The Concessionaire is encouraged to achieve all or a percentage of the required DBE participation/goals determined for this project by the utilization of approved BOWD approved firms. To assist the Concessionaire in taking advantage of this opportunity for utilization of approved BOWD firms, please contact the BOWD Center for additional information, details, resources, and support. For further information on the BOWD Center and to view the DBE profiles, please go to www.virginia.org/business/BOWD.asp. The BOWD Center can be contacted at (804) 662-9555 or via email to BOWDCenter@vdotvirginia.gov. Trainees may not have received prior training in the classification planned for the training opportunity. A journeyman in that classification must be on site and be available to assist with the training. The DCRM must be in agreement with the selected candidate.
- iv. Form C-67, weekly training hours report, is required and must have concurrence from the DCRM as to the number of hours of training received for that week.

ATTACHMENT 1

S107HF0-0708

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 107.15

January 17, 2008

Section 107.15 of the Specifications is replaced by the following:

Section 107.15—Use of Disadvantaged Business Enterprises (DBEs)

Disadvantaged Business Enterprise (DBE) Program Requirements.

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

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

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

Miscellaneous DBE Program Requirements.

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

these contractual obligations and to bind the Contractor's subcontractors contractually to the same at the Contractor's expense.

Required Contract Provisions.

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

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

Bank Services.

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

DBE Certification.

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

DBE Program-related Certifications Made by Bidders\Contractors.

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

- (1) That the management and bidding officers of its firm agree to comply with the bidding and project construction and

administration obligations of the USDOT DBE Program requirements and regulations of 49 CFR Part 26 as amended, and VDOT's Road and Bridge Specifications and DBE Program requirements and regulations.

- (2) Under penalty of perjury and other applicable penal law that it has complied with the DBE Program requirements in submitting the bid, and shall comply fully with these requirements in the bidding, award, and execution of the contract.
- (3) To ensure that certified DBE firms have been given full and fair opportunity to participate in the performance of the contract. The bidder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had and will have an opportunity to compete for and perform work on the contract. The bidder further certifies that the bidder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract.

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

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

Once a contract is awarded, the Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for certified DBEs. The designation and identity of this officer need be submitted only once by the Contractor during any twelve (12) month period at the preconstruction conference for the first

contract the Contractor has been awarded during that reporting period. The Department will post such information for informational and administrative purposes at VDOT's Internet Civil Rights Division website.

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

Designation of DBE Firms to Perform on Contract.

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

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

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

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

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

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

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

- (a) Contractor's Written Request to Terminate DBE

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

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

The Contractor shall send a copy of the "request to terminate and substitute" letter to the affected committed DBE firm, in conjunction with submitting the request to the

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

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

(c) Proposed Substitution of Another Certified DBE

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

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

Should the Contractor be unable to commit the remaining required dollar value to the substitute DBE, the Contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. The Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are merely superficial or pro-forma will not be considered good faith efforts to meet the contract goal for certified DBE participation. The Contractor must

document the steps taken that demonstrate good faith efforts to obtain participation as set forth in the Good Faith Efforts Described section of this Special Provision.

Bidding Procedures.

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

Contract Goal, Good Faith Efforts Specified.

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

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

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

Good Faith Efforts Described.

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

- (1) Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to certified DBEs who have the capability to perform the work of the contract. Examples include: advertising in at least one daily newspaper of general circulation; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. The bidder shall solicit this interest no less than five

- (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation. The bidder shall determine with certainty if the DBEs are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts on Department standard good faith documentation forms;
- (2) Selecting portions of the work to be performed by certified DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items completely or with its own forces;
- (3) Providing interested certified DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation;
- (4) Negotiating for participation in good faith with interested DBEs;
- (a) Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs that were considered; dates DBEs were contacted, a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work;
- (b) A bidder using good business judgment should consider a number of factors in negotiating subcontractors, including certified DBE subcontractors, and should take a firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using certified DBEs is not sufficient reason for a bidder's failure to meet the contract goal for certified DBE participation, as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make diligent good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference can be shown by the bidder to be excessive, unreasonable; or greater than would normally be expected by industry standards;

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

Bid Rejection.

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

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

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

Documentation, and Administrative Reconsideration of Good Faith Efforts.

During Bidding

As described in the Contract Goal, Good Faith Efforts Specified section of this Special Provision, the bidder must provide certified written documentation of its good faith efforts made to meet the DBE contract goal as proposed by VDOT within the timeframe specified in this section of the provision. No extension of time for submittal of good faith effort

documentation will be allowed. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain certified DBE firm participation in the proposed contract work.

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

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

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

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

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

During the Contract

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

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

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

DBE Participation for Contract Goal Credit.

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

- (1) Cost-plus subcontracts will not be considered to be in accordance with normal industry practice and will not normally be allowed for credit.
- (2) The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE will be counted toward meeting the contract goal for certified DBE participation in accordance with the Designation of DBE Firms to Perform on Contract section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the certified DBE firm itself or subcontracted by the certified DBE to other certified DBE firms.
- (3) When a certified DBE performs work as a participant in a joint venture, the Contractor may count toward the DBE goal only that portion of the total dollar value of the contract equal to the

distinctly defined portion of the contract work that the DBE has performed with the DBE's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a certified DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Contractor seeks to claim the certified DBE's credit toward the DBE contract goal.

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

- (4) The Contractor may count expenditures to a certified DBE subcontractor toward the DBE contract goal only if the certified DBE performs a Commercially Useful Function (CUF) on that contract.
- (5) A Contractor may not count the participation of a certified DBE subcontractor toward the Contractor's final compliance with the DBE contract goal obligations until the amount being counted has actually been paid to the certified DBE. A Contractor may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified by VDOT as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a VDOT certified DBE manufacturer.
 - (a) For the purposes of this Special Provision, a regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the material, supplies, articles, or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the certified DBE firm shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

- (b) A certified DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the certified DBE both owns and operates distribution equipment for the products it sells and provides for the contract work. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis to be eligible for credit to meet the DBE contract goal.
 - (c) If a certified DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that certified DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the certified DBE regular dealer, who shall be responsible for their distribution.
 - (d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the material, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.
- (6) A Contractor may count toward the DBE contract goal the following expenditures to certified DBE firms that are not regular dealers or manufacturers for DBE program purposes:
- (a) The entire amount of fees or commissions charged by a certified DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.
 - (b) The entire amount of that portion of the construction contract that is performed by the certified DBE's own forces and equipment under the DBE's supervision. This includes the cost of supplies and materials ordered and paid for by the certified DBE for contract work, including

supplies purchased or equipment leased by the certified DBE, except supplies and equipment a certified DBE subcontractor purchases or leases from the prime Contractor or its affiliates.

- (7) A Contractor may count toward the DBE contract goal one hundred (100) percent of the fees paid to a certified DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by VDOT to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. Nor could a Contractor count costs for the removal or relocation of excess material from or on the job site when the certified DBE trucking company is not also the manufacturer of or a regular dealer in those materials and supplies. The certified DBE trucking firm shall also perform a CUF on the project and not operate merely as a pass through for the purposes of gaining credit toward the DBE contract goal. Prior to submitting a bid, the Contractor shall determine, or contact the VDOT Civil Rights Division or its district Offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project.
- (8) The Contractor will receive DBE contract goal credit for the fees or commissions charged by and paid to a certified DBE broker who arranges or expedites sales, leases, or other project work or service arrangements provided that those fees are determined by VDOT to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that arranges for delivery of material, supplies, and equipment, or arranges project services but does not own or operate the delivery equipment necessary to transport materials, supplies, or equipment to or from a job site. A broker typically shall not purchase or pay for the material, supplies, or equipment, and if the broker does purchase or pay for those items those costs will be reimbursed in full. To receive DBE contract goal credit VDOT must determine that the DBE broker has performed a CUF in providing the contract work or service.

Performing a Commercially Useful Function (CUF).

No credit toward the DBE contract goal will be allowed for contract payments or expenditures to a certified DBE firm if that DBE firm does not perform a CUF on that contract. A DBE performs a CUF when the DBE is solely responsible for execution of a distinct element of the contract work and the DBE actually performs, manages, and supervises the work involved with the firm's own forces or in accordance with the provisions of

the DBE Participation for Contract Goal Credit section of this Special Provision. To perform a CUF the certified DBE alone shall be responsible and bear the risk for the material and supplies used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the certified DBE's own forces and equipment, and paying for those materials and supplies. The amount the certified DBE firm is to be paid under the contract shall be commensurate with the work the certified DBE actually performs and the DBE credit claimed for the certified DBE's performance.

Monitoring CUF Performance.

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

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

DBEs Must Perform a Useful and Necessary Role in Contract Completion.

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

DBEs Must Perform The Contract Work With Their Own Workforces.

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

performing a commercially useful function and such participation will not be counted toward the contract goal.

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

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

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

EXAMPLE: DBE Firm X uses two (2) of its own trucks on a contract. The firm leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of

transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z. In all, full DBE credit would be allowed for the participation of eight (8) trucks. With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

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

VDOT Makes Final Determination On Whether a CUF Is Performed.

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

Verification of DBE Participation and Imposed Damages.

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

The Contractor shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each

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

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

On contracts awarded on the basis of good faith efforts, narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

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

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

Documentation Required for Semi-final Payment.

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

Documentation Required for Final Payment.

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

Prompt Payment Requirements.

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

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

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

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

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

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

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

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

Data Collection.

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

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

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

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

Summary of Remedies Available to VDOT.

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

Disadvantaged Business Enterprise (DBE) Program Requirements.

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

DBE Program-related Certifications Made by Bidders\Contractors.

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

assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

Bid Rejection.

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

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

Documentation and Administrative Reconsideration of Good Faith Efforts.

During Bidding

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

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

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

During the Contract

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

Verification of DBE Participation and Imposed Damages for Non-compliance.

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

Prompt Payment Requirements.

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

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

Suspect Evidence of Criminal Behavior.

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

Suspected DBE Fraud.

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

EXHIBIT K

AUTHORIZED REPRESENTATIVES

[To Be Provided]

EXHIBIT L

TECHNICAL REQUIREMENTS

[Provided Separately]