

**AMENDED AND RESTATED  
COMPREHENSIVE AGREEMENT TO  
DEVELOP THE U.S. ROUTE 121 PROJECT**

**DATED AS OF MAY 1, 2017**

*BY AND AMONG*

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

*AND*

**CONTURA ENERGY, LLC**

*AND*

**BIZZACK CONSTRUCTION, LLC**

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LIST OF EXHIBITS:

Exhibit A	Definitions
Exhibit B	U.S. Route 121 Project Sections Map
Exhibit C	Form of Preliminary Design and Engineering Services Agreement
Exhibit D	Form of Design-Build Agreement (Rough Grade Roadbed)
Exhibit E	Form of Design-Build Agreement (Paved Road)

This AMENDED AND RESTATED COMPREHENSIVE AGREEMENT TO DEVELOP THE U.S. ROUTE 121 PROJECT (this “Agreement”) is made and entered into as of May 1, 2017, by and between the Virginia Department of Transportation (the “Department”), whose principal address is 1401 East Broad Street, Richmond, Virginia 23219, an agency of the Commonwealth of Virginia (the “Commonwealth”), Contura Energy, LLC registered to transact business in Virginia as Contura Energy Virginia, LLC (“Contura”), whose principal address is 340 Martin Luther King Jr. Boulevard, Bristol, TN 37620 and Bizzack Construction, LLC (“Bizzack”), whose principal address is 3009 Atkinson Avenue, Suite 200, Louisville, KY 40509, (Contura and Bizzack are referred to individually or collectively as the “Contractor” or the “Contractors”).

**RECITALS**

(a) On March 25, 1995, the Governor of the Commonwealth signed into law, effective July 1, 1995, the Public-Private Transportation Act, as amended, codified at Va. Code §§ 33.2-1800, *et seq.* (as amended, the “Act”).

(b) The Act grants the Department the authority to allow private entities to develop and/or operate qualifying transportation facilities if the Department determines there is a need for the facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion.

(c) On July 1, 1995, the Department adopted guidelines for the selection of solicited and unsolicited proposals for negotiation under the Act, which were revised in April 2001 and October 31, 2005, with an addendum issued on December 5, 2008, and updated on December 8, 2010, May 21, 2012 and November 12, 2014 (as revised and updated, the “Implementation Guidelines”).

(d) Pursuant to the Act, on December 6, 1999, Kellogg, Brown & Root, Inc. (“KBR”) submitted an unsolicited conceptual proposal (the “Conceptual Proposal”) to the Department for the design, construction, and maintenance of certain transportation facilities which collectively the Department refers to as the U.S. Route 121 Project (formerly known as the Coalfields Expressway) (the “Proposed Project”).

(e) In accordance with the Implementation Guidelines, the Department duly posted and published notice of the Conceptual Proposal. During the posting period ending January 24, 2000, the Department received one competing proposal submitted by Koch Materials Company and APAC, Inc. (“Koch/APAC”) dated January 24, 2000. In accordance with Implementation Guidelines in effect at the time, the then-existing “Initial Review Committee” reviewed the proposals submitted by both KBR and Koch/APAC for the development of the Proposed Project based on the proposer’s qualifications and the technical and financial merits of the proposals.

(f) Following a determination by the Initial Review Committee that the Conceptual Proposal merited a further review, on April 20, 2000 the Commonwealth Transportation Board adopted a resolution approving the Conceptual Proposal for further evaluation and inviting KBR

to submit a detailed proposal for consideration by the Public Private Transportation Advisory Panel (the “Advisory Panel”) in accordance with the Implementation Guidelines.

(g) On September 28, 2000, KBR submitted its detailed proposal (the “Detailed Proposal”) to the Advisory Panel for consideration. The Advisory Panel evaluated the Detailed Proposal using the “Proposal Evaluation and Selection Criteria” set forth in the Implementation Guidelines.

(h) On September 26, 2001, negotiations with KBR for a comprehensive agreement commenced at the direction of the Commissioner.

(i) The Department and KBR executed (1) a comprehensive agreement (the “Original Comprehensive Agreement”) dated January 11, 2002, concerning the design, construction and maintenance of the Proposed Project and (2) a design-build contract (the “Original Design-Build Contract”) dated January 11, 2002, concerning the Proposed Project.

(j) On January 11, 2006, the Department, Alpha Natural Resources, LLC (“Alpha”) Pioneer Group, Inc. (“Pioneer”), which, effective as of April 10, 2009, changed its name to Rapoca Energy Company (“Rapoca”) and KBR entered into an assignment and assumption agreement (the “Assignment and Assumption Agreement”) pursuant to which KBR assigned all of its rights and obligations under each of the Original Comprehensive Agreement and the Original Design-Build Contract to Alpha and Pioneer, and Alpha and Pioneer assumed all of KBR’s rights and obligations under the Original Comprehensive Agreement and the Original Design-Build Contract, subject to certain obligations and conditions as set forth therein and which provided that all of Alpha’s and Pioneer’s obligations under the Original Comprehensive Agreement and the Original Design-Build Contract would be suspended in order to allow good faith negotiations between the Department, Alpha, and Pioneer for the purpose of modifying the Original Comprehensive Agreement and the Original Design-Build Contract to reflect the potential use of the value of Alpha’s and Pioneer’s coal reserves and expertise in mining and large-scale earth moving operations to reduce estimated Project development costs.

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

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

(m) On September 10, 2008, the Department, Alpha, and Pioneer entered into a Second Amendment to the Assignment and Assumption Agreement (the “Second Amendment to Assignment”), for the development by Alpha of a rough-grade roadbed for the Hawks Nest Section because of the projected substantial cost savings and the limited availability of such opportunities before the Department, Alpha, and Pioneer were able to complete negotiation of modifications to the Original Comprehensive Agreement.

(n) On December 5, 2011, the Department, Alpha and Rapoca entered into a Third Amendment to the Assignment and Assumption Agreement (the “Third Amendment to Assignment”), for the development by Alpha of the preliminary engineering and preliminary design analyses and services necessary to allow the Department to evaluate the practicability of developing two other Project Sections, the Pound Connector Section and Doe Branch Section.

(o) Effective as of July 31, 2013, the then sole owner of Rapoca entered into a purchase and sale agreement, pursuant to which Bizzack, Inc., the controlling owner of Bizzack, acquired 100% of the stock of Rapoca and Rapoca assigned all of its rights, obligations, and privileges under the Original Comprehensive Agreement to Bizzack, which assignment, in accordance with the Original Comprehensive Agreement, was approved by the Department.

(p) On May 16, 2014, the Department and the Contractors entered into a First Addendum to the First Amendment to Assignment (the “First Addendum”) pursuant to which (i) Bizzack assigned to Alpha all of Bizzack’s rights to the Route 121/Corridor Q Intersection and (ii) Alpha assigned to Bizzack all of Alpha’s rights to a portion of the Hawks Nest Section (that is now part of the Poplar Creek Section), to all of which the Department approved and consented.

(q) On May 16, 2014, the Department and the Contractors entered into a Fourth Amendment to the Assignment and Assumption Agreement (the “Fourth Amendment to Assignment”) for the development by Bizzack of the preliminary engineering and preliminary design analyses and services necessary to allow the Department to evaluate the practicability of developing the Poplar Creek Section.

(r) On October 21, 2014, the Department and the Contractors entered into a letter agreement to extend the date for the completion of negotiations for modifications to the Original Comprehensive Agreement specified in the First Amendment to Assignment (as previously extended by letter agreements) from January 30, 2015, to January 30, 2017.

(s) On July 6, 2016, the Department and the Contractors entered into a Fifth Amendment to the Assignment and Assumption Agreement (the “Fifth Amendment to Assignment”) to provide for the design and construction by Bizzack of the Poplar Creek Section in phases.

(t) On July 6, 2016, the Department and Bizzack entered into a design-build contract for Poplar Creek Section Phase A pursuant to the Fifth Amendment to Assignment (the “Poplar Creek Section Design-Build Contract Phase A”).

(u) Effective as of July 26, 2016, in connection with jointly-administered bankruptcy proceedings in the United States Bankruptcy Court for the Eastern District of Virginia in the case captioned *In re Alpha Natural Resources, Inc., et al.*, Case No. 15-33896 (KRH), Alpha assigned

to Contura, and Contura assumed, all of Alpha's rights, obligations and privileges under the Original Comprehensive Agreement, the Original Design-Build Contract, the Assignment and Assumption Agreement, and the Pre-ARCA Amendments.

(v) On January 30, 2017, the Department and the Contractors entered into a letter agreement to extend the date for the completion of negotiations for modifications to the Original Comprehensive Agreement specified in the First Amendment to Assignment (as previously extended by letter agreements) from January 30, 2017, to May 1, 2017.

(w) On February 16, 2017, the Department and the Contractors entered into a Second Addendum to the First Amendment to Assignment (the "Second Addendum") pursuant to which (i) Contura assigned to Bizzack all of Contura's rights to the Route 121/Corridor Q Intersection; (ii) Contura assigned to Bizzack all of Contura's rights to paving the Hawks Nest Section, to all of which the Department approved and consented; and (iii) the Department and the Contractors agreed to certain other rights and obligations related to the Route 121/Corridor Q Intersection permits and property interests.

(x) Pursuant to Section 2.2 of the Assignment and Assumption Agreement and Section 16.15(c) of the Original Comprehensive Agreement, the parties have completed their negotiations to modify the Original Comprehensive Agreement and desire to amend and restate the Original Comprehensive Agreement and to terminate the Original Design-Build Contract, in each case upon the terms set forth herein.

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

**ARTICLE 1**

**DEFINITIONS**

All capitalized terms used in this Agreement, but not expressly defined in this Agreement, have the respective meanings set forth in Exhibit A attached to this Agreement.

**ARTICLE 2**

**ESTABLISHMENT OF PUBLIC-PRIVATE TRANSACTION**

**Section 2.01 Basic Agreement**

(a) The parties agree that the Project will be developed, designed, and constructed in accordance with this Agreement, subsequent and separate contracts entered into by the Department and the Contractors substantially in the forms of Exhibits C, D and E, as applicable, in addition to the Pre-ARCA Amendments, all as further described in this Agreement. This Section 2.01 identifies and establishes the basic roles and responsibilities of the parties. This Section 2.01 is not intended, and shall not be construed, to impose any obligations on any party, or provide any party with any rights, that are in addition to any rights or obligations set forth in

the Pre-ARCA Amendments or otherwise as set forth elsewhere in this Agreement in connection with the subject matter thereof.

(b) As depicted in Exhibit B, the Project will be developed, designed, and constructed in eight sections (referred to individually as the “Project Section” or collectively as the “Project Sections”), known as the following:

- (i) Pound Connector Section
- (ii) Cranes Nest Section
- (iii) Doe Branch Section
- (iv) Route 121/Corridor Q Intersection
- (v) Hawks Nest Section
- (vi) Poplar Creek Section
- (vii) Elkins Section
- (viii) Rockhouse Section

From time to time, the Department and the applicable Contractor may agree to develop, design and construct a Project Section, or portion thereof, through subsequent and separate contracts entered into by the Department and the applicable Contractor substantially in the forms of Exhibits C, D and E, as applicable, as contemplated under and in accordance with the terms of this Agreement, but only to the extent not contracted under a Pre-ARCA Amendment.

(c) Subject to the terms and conditions of this Agreement, Contura shall have the right and obligation to develop, design, and construct the following Project Sections, or portions thereof (referred to individually or collectively as the “Contura Section” or “Contura Sections”):

- (i) Pound Connector Section
- (ii) Cranes Nest Section
- (iii) Doe Branch Section

(d) Subject to the terms and conditions of this Agreement, Bizzack shall have the right and obligation to develop, design, and construct the following Project Sections, or portions thereof (referred to individually or collectively as the “Bizzack Section” or “Bizzack Sections”):

- (i) Poplar Creek Section
- (ii) Elkins Section
- (iii) Rockhouse Section

- (iv) Route 121/Corridor Q Intersection
- (v) Hawks Nest Section (but limited to paving rights and obligations)

(e) The Department will use reasonable efforts in performing its rights and obligations under this Agreement to minimize any disruption to or impairment of the performance of any Contractor's rights and obligations under this Agreement; provided, that nothing in this Section 2.01(e) will limit the Department's rights and obligations under this Agreement.

**Section 2.02 Pre-ARCA Work Authorized Prior to the Agreement Date**

(a) Prior to the Agreement Date, the Department authorized the parties to perform Pre-ARCA Work pursuant to the following amendments (including all addenda) to the Assignment and Assumption Agreement (referred to individually or collectively as the "Pre-ARCA Amendment" or "Pre-ARCA Amendments," in each case as amended from time to time):

- (i) First Amendment to Assignment
- (ii) Second Amendment to Assignment
- (iii) Third Amendment to Assignment
- (iv) Fourth Amendment to Assignment
- (v) Fifth Amendment to Assignment

(b) Notwithstanding anything to the contrary in this Agreement, the performance of the Pre-ARCA Work, and the parties' obligations and remedies with respect to the performance of the Pre-ARCA Work, shall be governed by and subject to the applicable Pre-ARCA Amendment.

**Section 2.03 Services and Work Authorized After Agreement Date**

(a) Concurrently with the execution of this Agreement, the parties have executed a Sixth Amendment to the Assignment and Assumption Agreement ("Sixth Amendment to Assignment"):

- (i) terminating the Original Design-Build Contract without liability to any party; and
- (ii) acknowledging that: (A) the parties have concluded their negotiations to modify the Original Comprehensive Agreement; and (B) this Agreement shall govern any Services, and the applicable Preliminary Design and Engineering Services Agreement or Design-Build Agreement shall govern any Work, authorized and performed after the Agreement Date.

(b) After the Agreement Date, the parties agree that the Services will be performed pursuant to, and subject to the terms and conditions of, this Agreement and the Work will be performed pursuant to, and subject to the terms and conditions of, the applicable Preliminary Design and Engineering Services Agreement or Design-Build Agreement.

(c) As set forth in more detail in ARTICLE 4, Preliminary Design and Engineering Services for a Project Section, or portion thereof, will be authorized after the Department and the applicable Contractor have negotiated and executed a Preliminary Design and Engineering Services Agreement for the applicable Project Section, or portion thereof.

(d) As set forth in more detail in ARTICLE 5, Design-Build Services for a Project Section, or portion thereof, will be authorized after the Department and the applicable Contractor have negotiated and executed a Design-Build Agreement for the applicable Project Section, or portion thereof.

#### **Section 2.04 Nature of the Contractors' Interests**

This Agreement does not grant to the Contractors any fee title, leasehold estate, easement or other real property interest of any kind in or to the Project or the Project Right of Way. Each Contractor's Interest pursuant to this Agreement is limited to the applicable Development Rights granted by this Agreement pursuant to Section 3.01.

### **ARTICLE 3**

#### **GRANT OF DEVELOPMENT RIGHTS; TERM**

##### **Section 3.01 Development Rights**

(a) Pursuant to the Act and subject to the terms and conditions of this Agreement, including the Department's express obligations hereunder, Contura shall have the exclusive right to develop, design, and construct the Contura Sections (the "Contura Development Rights").

(b) Pursuant to the Act and subject to the terms and conditions of this Agreement, including the Department's express obligations hereunder, Bizzack shall have the exclusive right to develop, design, and construct the Bizzack Sections (the "Bizzack Development Rights").

##### **Section 3.02 Term**

This Agreement will take effect on the Agreement Date and will remain in effect until the first to occur of (a) December 31, 2028 or (b) the termination of both Contractors' Development Rights pursuant to ARTICLE 10 (such period, the "Term"). The expiration or termination of the Term does not affect the contract term under any subsequent and separate contracts entered into by the Department and the applicable Contractor substantially in the forms of Exhibits C, D and E, as applicable, or any of the Pre-ARCA Amendments.

ARTICLE 4

**PRELIMINARY DESIGN AND ENGINEERING SERVICES**

**Section 4.01 Request for Authorization for Preliminary Design and Engineering Services**

(a) Following discussions between a Contractor and the Department with respect to such Contractor's Project Section as set forth in Section 4.01(d), such Contractor may request authorization from the Department to perform Preliminary Design and Engineering Services for its applicable Project Section, or portion thereof, by delivering written notice to the Department (the "PDES Authorization Request"). The PDES Authorization Request shall contain the following preliminary information:

- (i) identity of the Project Section, or portion thereof;
- (ii) proposed scope of Preliminary Design and Engineering Services;
- (iii) proposed initial baseline schedule;
- (iv) proposed contract price for the work;
- (v) description of any Project Section-specific real property-related issues and technical issues or requirements;
- (vi) list of Governmental Approvals required for the Project Section, or portion thereof; and
- (vii) description of any in-kind donations, mineral rights or other real property rights to be acquired for the Project Section, or portion thereof.

(b) Within 30 days after receipt of the PDES Authorization Request, the Department will notify the Contractor, in writing, that: (i) the Department will commence negotiations with the Contractor pursuant to Section 4.02; (ii) the Contractor must resubmit the PDES Authorization Request due to insufficient information, with the notice describing the additional information required (in which case, following Contractor's resubmission, the Department being obligated to respond as soon as possible, but in no event later than 30 days after receipt of such resubmitted PDES Authorization Request); (iii) sufficient funding is not currently available and that the Contractor may resubmit the PDES Authorization Request when sufficient funding becomes available; or (iv) the Department will not approve the PDES Authorization Request, with the notice describing the reasons for not approving the PDES Authorization Request.

(c) The Department may, at its sole option, also request that a Contractor: (i) submit a PDES Authorization Request for its applicable Project Section, or portion thereof; provided, however, that the Department in such request notifies the applicable Contractor that sufficient funding is available to pay the Allocable Costs incurred by such Contractor in responding to such request (except that the applicable Contractor may waive the foregoing requirement to provide such notice) or (ii) enter into negotiations for a Design-Build Agreement pursuant to ARTICLE

5 without executing a Preliminary Design and Engineering Services Agreement for its applicable Project Section, or portion thereof; provided, however, that the Department in such request notifies the applicable Contractor that (A) sufficient funding is available to pay the Allocable Costs incurred by such Contractor in submitting information required for such negotiations in accordance with ARTICLE 5 and (B) sufficient funding is available to design and construct the applicable Project Section, or portion thereof (except that the applicable Contractor may waive the foregoing requirement to provide such notice).

(d) For purposes of this Section 4.01, if either the Department or a Contractor desires to enter into discussions in advance of such Contractor's contemplation of delivery of any PDES Authorization Request, the other party agrees to engage in such discussions in good faith. Nothing in this Section 4.01(d) shall be deemed to require such Contractor to submit thereafter a PDES Authorization Request nor (i) prejudice the Department's rights under Section 4.01(b) or (ii) require the Department to act pursuant to Section 4.01(c).

(e) Subject to Section 4.01(f), a Contractor shall be entitled to Allocable Costs incurred in preparing the PDES Authorization Request as follows: (i) with respect to the Department's response under Section 4.01(b)(i) and Section 4.01(c), all Allocable Costs incurred upon commencement of preparation of the PDES Authorization Request; (ii) with respect to the Department's response under Section 4.01(b)(ii), the Allocable Costs incurred in preparing those portions of the PDES Authorization Request, but no Allocable Costs incurred in responding to the Department's request for additional information due to the insufficiency identified in the Department's notification; and (iii) with respect to the Department's response under Section 4.01(b)(iii) or Section 4.01(b)(iv), the Allocable Costs incurred in preparation of the initial PDES Authorization Request and the subsequent PDES Authorization Request, when submitted and without double counting for duplicative costs claimed in the case of multiple PDES Authorization Requests. The process for reimbursing a Contractor for such Allocable Costs shall be in accordance with Section 15.03.

(f) Notwithstanding the foregoing Section 4.01(e), if (i) a Contractor delivers a PDES Authorization Request without having first engaged with the Department in discussions under Section 4.01(a) or (ii) the Department expressly notifies a Contractor not to submit a PDES Authorization Request (and the Department did not request a PDES Authorization Request under Section 4.01(c)), and the Department responds under Section 4.01(b)(ii), (iii) or (iv), then Contractor shall not be entitled to Allocable Costs in the preparation and revision, if applicable, of such PDES Authorization Request.

#### **Section 4.02 Negotiations for Preliminary Design and Engineering Services**

(a) Within 14 days of receipt of the Department's notice to commence negotiations for Preliminary Design and Engineering Services, the Department and the applicable Contractor will establish a mutually-agreeable negotiations schedule with respect to such Preliminary Design and Engineering Services (the "PDES Negotiations Schedule"). The PDES Negotiations Schedule will establish, at a minimum, (i) the anticipated meeting dates for negotiations; (ii) the deliverables required by each party; and (iii) the anticipated execution date of the Preliminary Design and Engineering Services Agreement.

- (b) The Department and the applicable Contractor acknowledge and agree that:
- (i) the Form of Preliminary Design and Engineering Services Agreement attached as Exhibit C to this Agreement will be used to establish the contract price for the Preliminary Design and Engineering Services;
  - (ii) the Department and the applicable Contractor will not seek to deviate from the Form of Preliminary Design and Engineering Services Agreement, except to address (A) Department policy changes relating directly to design-build contacts or Department's design-build program, (B) changes required by applicable Law or (C) issues that are unique or specific to the applicable Project Section, or portion thereof (it being understood and acknowledged by each of the parties that the "Technical Requirements" (as defined in Exhibit C) with respect to each Project Section will be tailored to the scope of Work unique or specific to such Project Section), or any combination of (A), (B) and (C);
  - (iii) the Department and the applicable Contractor will use good faith efforts to adhere to the PDES Negotiations Schedule, as may be modified by mutual agreement of such parties; and
  - (iv) the Contractor who did not submit the applicable PDES Authorization Request will have no right to participate in such negotiations, will not have the right to approve the Preliminary Design and Engineering Services Agreement, and will not be a party to the Preliminary Design and Engineering Services Agreement for the applicable Project Section, or portion thereof.

#### **Section 4.03 Transfer of Rights to Negotiate**

(a) Contura may seek to transfer its rights and allow Bizzack to negotiate and enter into a Preliminary Design and Engineering Services Agreement with respect to a Contura Section. In such event, Contura and Bizzack will deliver a joint request informing the Department that Contura seeks to transfer its rights and allow Bizzack to enter into such negotiations with the Department. Within 14 days of receipt of such joint request, the Department will notify the Contractors whether the Department: (i) approves such transfer of rights in accordance with Section 15.01(b); (ii) requires additional information, with the notice describing the additional information required; or (iii) disapproves such transfer of rights, with the notice describing the reasons for not approving such transfer.

(b) Bizzack may seek to transfer its rights and allow Contura to negotiate and enter into a Preliminary Design and Engineering Services Agreement with respect to a Bizzack Section. In such event, Bizzack and Contura will deliver a joint request informing the Department that Bizzack seeks to transfer its rights and allow Contura to enter into such negotiations with the Department. Within 14 days of receipt of such joint request, the Department will notify the Contractors whether the Department: (i) approves such transfer of rights in accordance with Section 15.01(b); (ii) requires additional information, with the notice describing the additional information required; or (iii) disapproves such transfer of rights, with the notice describing the reasons for not approving such transfer.

(c) In the event that a Contractor accepts a transfer of rights to negotiate in accordance with this Section 4.03 and the Department approves such transfer, such Contractor will submit a PDES Authorization Request and the provisions of Section 4.01 and Section 4.02 will apply.

#### **Section 4.04 Suspension and Termination of Negotiations**

(a) Nothing in this Agreement will obligate or require any party to enter into a Preliminary Design and Engineering Services Agreement for any Project Section, or portion thereof, and the Department or the applicable Contractor will have the right to suspend or terminate negotiations at any time.

(b) If, after the good faith efforts of both the Department and the applicable Contractor, the Department is unable to enter into a Preliminary Design and Engineering Services Agreement with the applicable Contractor, then, following written notice to such Contractor explaining why the Department has determined that the Department and such Contractor were unable to enter into a Preliminary Design and Engineering Services Agreement, the Department may perform the Preliminary Design and Engineering Services for the applicable Project Section, or portion thereof, with its own personnel, retain a separate contractor to perform such services, or exercise any other right available to the Department under this Agreement.

#### **Section 4.05 Documents Furnished to Other Contractor**

The Contractor who did not submit the applicable PDES Authorization will be entitled to receive from the Department upon request copies of the following (if applicable): (a) the PDES Authorization Request; (b) the Department's response to the PDES Authorization Request issued pursuant to Section 4.01(b); (c) the request issued by the Department pursuant to Section 4.01(c); and (d) the executed Preliminary Design and Engineering Services Agreement.

### **ARTICLE 5**

#### **DESIGN-BUILD SERVICES**

##### **Section 5.01 Feasibility Determination for Paved Road**

(a) After approval of all deliverables required under the Preliminary Design and Engineering Services Agreement and completion of the Preliminary Design and Engineering Services for the applicable Project Section, or portion thereof, the Department will notify the applicable Contractor whether it is feasible to proceed with the development of a Paved Road for such Project Section, or portion thereof (the "Feasibility Determination").

(b) If the Department issues a Feasibility Determination indicating that it is not feasible to proceed with the development of a Paved Road for the applicable Project Section, or portion thereof, the Department and the applicable Contractor will meet to discuss (i) clarifications of any original information submitted or produced by the applicable Contractor and/or (ii) if there are measures that can be taken, including modifications to the Preliminary

Design and Engineering Services deliverables, to enable the Project Section, or portion thereof, to proceed with the development of a Paved Road.

(c) If the Department issues a Feasibility Determination indicating that it is feasible to proceed with the development of a Paved Road for the applicable Project Section, or portion thereof, the Department and the applicable Contractor will commence negotiations pursuant to Section 5.02 to construct a Rough Grade Roadbed for such Project Section, or portion thereof.

(d) Notwithstanding the provisions of this Section 5.01, the Department may, at its sole option, notify a Contractor that the Department seeks to negotiate a Design-Build Agreement for a Rough Grade Roadbed for the applicable Project Section, or portion thereof, pursuant to Section 5.02 without entering into a Preliminary Design and Engineering Services Agreement for such Project Section, or portion thereof.

### **Section 5.02 Negotiations for Rough Grade Roadbed**

(a) Within 90 days after receiving the Department's Feasibility Determination pursuant to Section 5.01(c) (or 120 days after delivery of notice pursuant to Section 5.01(d) if there was no Preliminary Design and Engineering Services Agreement with respect to the applicable Project Section), or such other time as may be mutually agreed upon between the Department and the applicable Contractor, the Contractor will submit the following preliminary information:

- (i) general description of the Design-Build Services for the Rough Grade Roadbed;
- (ii) proposed initial baseline schedule;
- (iii) proposed contract price for the Rough Grade Roadbed;
- (iv) description of any Project Section-specific real property-related issues and technical issues or requirements, if any;
- (v) such other agreed-upon deliverables; and
- (vi) such other deliverables identified in the Feasibility Determination reasonably necessary, as determined by the Department in its good faith discretion, to commence negotiations to construct a Rough Grade Roadbed for such Project Section, or portion thereof, the delivery of which being practical within the periods identified in this Section 5.02(a) or, upon request by the applicable Contractor, within 30 additional days thereafter or such longer time period as may be agreed upon by the Department and the applicable Contractor.

(b) Within 14 days of receipt of the Department's receipt of all deliverables required under Section 5.02(a), the Department and the applicable Contractor will establish a mutually-agreeable negotiations schedule with respect to the Design-Build Services for the Rough Grade Roadbed (the "Rough Grade Roadbed Negotiations Schedule"). The Rough Grade Roadbed Negotiations Schedule will establish, at a minimum, (i) the anticipated meeting dates for

negotiations; (ii) the deliverables required by each party; and (iii) the anticipated execution date of the Design-Build Agreement for the Rough Grade Roadbed.

(c) The Department and the applicable Contractor acknowledge and agree that:

(i) the Form of Design-Build Agreement (Rough Grade Roadbed) attached as Exhibit D to this Agreement will be used to establish the contract price for the Rough Grade Roadbed;

(ii) the Department and the applicable Contractor will not seek to deviate from the Form of Design-Build Agreement (Rough Grade Roadbed), except to address (A) Department policy changes relating directly to design-build contacts or Department's design-build program, (B) changes required by applicable Law or (C) issues that are unique or specific to the applicable Project Section, or portion thereof (it being understood and acknowledged by each of the parties that the "Technical Requirements" (as defined in Exhibit D) with respect to each Project Section will be tailored to the scope of Work unique or specific to such Project Section), or any combination of (A), (B) and (C);

(iii) the Department and the applicable Contractor will use good faith efforts to adhere to the Rough Grade Roadbed Negotiations Schedule, as may be modified by (A) a party due to a change in Law affecting the applicable Project Section, or portion thereof, or other good-faith reason or (B) mutual agreement of such parties; and

(iv) the Contractor who does not have the right to develop the applicable Project Section, or portion thereof, to a Rough Grade Roadbed will have no right to participate in such negotiations, and will not be a party to such Design-Build Agreement for the applicable Project Section, or portion thereof.

### **Section 5.03 Negotiations for Paved Road**

(a) The Department may, at any time and at its sole option, notify a Contractor that the Department seeks to negotiate a Design-Build Agreement for a Paved Road for the applicable Project Section, or portion thereof (a "Paved Notice"). Such notice may be issued without first entering into either (i) a Preliminary Design and Engineering Services Agreement or (ii) a Design-Build Agreement for a Rough Grade Roadbed. If a Rough Grade Roadbed was completed for the applicable Project Section by the Department's own personnel or by a separate contractor pursuant to Section 5.06(b), then the Department will provide the applicable Contractor with the "as-built" survey for such Project Section prepared by the Department's own personnel or by such separate contractor as part of the notice issued under this Section 5.03(a).

(b) Within 90 days after receiving the Paved Notice (or within 120 days after receiving the Paved Notice if there was no Preliminary Design and Engineering Services Agreement and no Design-Build Agreement for a Rough Grade Roadbed, in each case with respect to the applicable Project Section), or such other time as may be mutually agreed upon between the Department and the applicable Contractor, the Contractor will submit the following preliminary information:

- (i) general description of the Design-Build Services for the Paved Road;
- (ii) proposed initial baseline schedule;
- (iii) proposed contract price for the Paved Road;
- (iv) description of any Project Section-specific real property-related issues and technical issues or requirements, if any;
- (v) such other agreed-upon deliverables; and
- (vi) such other deliverables identified in the Paved Notice, as determined by the Department in its good faith discretion, to commence negotiations to construct a Paved Road for such Project Section, or portion thereof, the delivery of which being practical within the periods identified in this Section 5.03(b) or, upon request by the applicable Contractor, within 30 additional days thereafter or such longer time period as may be agreed upon by the Department and the applicable Contractor.

(c) Within 30 days of receipt of the Department's receipt of all deliverables required under Section 5.03(b), the Department and the applicable Contractor will establish a mutually-agreeable negotiations schedule with respect to the Design-Build Services for the Paved Road (the "Paved Road Negotiations Schedule"). The Paved Road Negotiations Schedule will establish, at a minimum, (i) the anticipated meeting dates for negotiations; (ii) the deliverables required by each party; and (iii) the anticipated execution date of the Design-Build Agreement for the Paved Road.

(d) The Department and the applicable Contractor acknowledge and agree that:

(i) the Form of Design-Build Agreement (Paved Road) attached as Exhibit E to this Agreement will be used to establish the contract price for the Paved Road;

(ii) the Department and the applicable Contractor will not seek to deviate from the Form of Design-Build Agreement (Paved Road), except to address (A) Department policy changes relating directly to design-build contracts or Department's design-build program, (B) changes required by applicable Law or (C) issues that are unique or specific to the applicable Project Section, or portion thereof (it being understood and acknowledged by each of the parties that the "Technical Requirements" (as defined in Exhibit E) with respect to each Project Section will be tailored to the scope of Work unique or specific to such Project Section), or any combination of (A), (B) and (C);

(iii) the Department and the applicable Contractor will use good faith efforts to adhere to the Paved Road Negotiations Schedule, as may be modified by mutual agreement of such parties; and

(iv) the Contractor who does not have the right to develop the applicable Project Section, or portion thereof, to a Paved Road will have no right to

participate in such negotiations, and will not be a party to such Design-Build Agreement for the applicable Project Section, or portion thereof.

**Section 5.04 Transfer of Rights to Negotiate**

(a) Contura may seek to transfer its rights and allow Bizzack to negotiate and enter into a Design-Build Agreement with respect to a Contura Section. In such event, Contura and Bizzack will deliver a joint request informing the Department that Contura seeks to transfer its rights and allow Bizzack to enter into such negotiations with the Department. Within 14 days of receipt of such joint request, the Department will notify the Contractors whether the Department: (i) approves such transfer of rights in accordance with Section 15.01(b); (ii) requires additional information, with the notice describing the additional information required; or (iii) disapproves such transfer of rights, with the notice describing the reasons for not approving such transfer.

(b) Bizzack may seek to transfer its rights and allow Contura to negotiate and enter into a Design-Build Agreement with respect to a Bizzack Section. In such event, Bizzack and Contura will deliver a joint request informing the Department that Bizzack seeks to transfer its rights and allow Contura to enter into such negotiations with the Department. Within 14 days of receipt of such joint request, the Department will notify the Contractors whether the Department: (i) approves such transfer of rights in accordance with Section 15.01(b); (ii) requires additional information, with the notice describing the additional information required; or (iii) disapproves such transfer of rights, with the notice describing the reasons for not approving such transfer.

(c) In the event that a Contractor accepts a transfer of rights to negotiate in accordance with this Section 5.04, the provisions of Section 5.01 through Section 5.03 will apply.

**Section 5.05 Engineering and Construction Management Services**

In the event that a Contractor executes a Design-Build Agreement to develop a Project Section, or portion thereof, to either a Rough Grade Roadbed or a Paved Road, such Contractor will perform itself, or through its Affiliates or other subcontractors, all engineering and construction management services required after the establishment of the Rough Grade Roadbed for such Project Section, or portion thereof.

**Section 5.06 Suspension and Termination of Negotiations**

(a) Nothing in this Agreement will obligate or require any party to enter into a Design-Build Agreement for any Project Section, or portion thereof, and the Department or the applicable Contractor will have the right to suspend or terminate negotiations at any time.

(b) If, after the good faith efforts of both the Department and a Contractor to negotiate, the Department is unable to enter into a Design-Build Agreement for either a Rough Grade Roadbed or Paved Road with the applicable Contractor, then, following written notice to such Contractor explaining the reasons why the Department has determined that the Department and such Contractor were unable to enter into a Design-Build Agreement, the Department may perform such Design-Build Services for the applicable Project Section, or portion thereof, with

its own personnel, retain a separate contractor to perform such services, or exercise any other right available to the Department under this Agreement.

**Section 5.07 Documents Furnished to Other Contractor**

The Contractor who did not have the right to develop the applicable Project Section, or portion thereof, to a Rough Grade Roadbed or Paved Road (as applicable) will be entitled to receive from the Department copies of the following (if applicable): (a) the Feasibility Determination issued pursuant to Section 5.01(c) indicating that it is feasible to proceed with the development of a Paved Road; (b) the notice issued by the Department pursuant to Section 5.01(d); (c) the executed Design-Build Agreement for the Rough Grade Roadbed; and (d) the executed Design-Build Agreement for the Paved Road.

**Section 5.08 Allocable Costs Incurred**

A Contractor shall be entitled to the Allocable Costs incurred in submitting the information required under Section 5.02(a) and Section 5.03(b). The process for reimbursing a Contractor for such Allocable Costs shall be in accordance with Section 15.03.

**ARTICLE 6**

**MAINTENANCE AFTER PROJECT SECTION FINAL COMPLETION**

(a) After Final Completion of the Rough Grade Roadbed and/or, if applicable, the Paved Road with respect to a Project Section, or portion thereof, neither Contura nor Bizzack will have the right or obligation to perform maintenance work on such Project Section, or portion thereof, or have any liability associated with failure to perform any such maintenance work, and the Department may, at its sole discretion, perform such maintenance work with its own personnel or retain a separate contractor to perform such maintenance work.

(b) Nothing in this ARTICLE 6 will modify, diminish or alter the parties' rights and obligations under the Design-Build Agreement for the applicable Project Section, or portion thereof.

**ARTICLE 7**

**INDEMNIFICATION**

**Section 7.01 Indemnities**

(a) Subject to Section 15.09, Contura will indemnify, protect, hold harmless and release a Commonwealth Indemnitee from and against any Losses, including reasonable attorneys' fees, attributable to Third-Party Claims arising out of any negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of a Contura-Related Party in connection with or relating to this Agreement, except to the extent such Third-Party Claims are attributable to the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of a Commonwealth Indemnitee.

(b) Subject to Section 15.09, Bizzack will indemnify, protect, hold harmless and release a Commonwealth Indemnitee from and against any Losses, including reasonable attorneys' fees, attributable to Third-Party Claims arising out of any negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of a Bizzack-Related Party in connection with or relating to this Agreement, except to the extent such Third-Party Claims are attributable to the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of a Commonwealth Indemnitee.

(c) Notwithstanding anything to the contrary in this Agreement, any Third-Party Claim that would be attributable to the Work under a Preliminary Design and Engineering Services Agreement or Design-Build Agreement for the applicable Project Section, or portion thereof, will be governed by the applicable indemnity provisions of such Preliminary Design and Engineering Services Agreement or Design-Build Agreement and not under this ARTICLE 7.

### **Section 7.02 Defense and Indemnification Procedures**

(a) In the event any Third-Party Claim for which a Contractor may be required to indemnify a Commonwealth Indemnitee hereunder is asserted in writing against the Commonwealth Indemnitee, the Department will as promptly as practical notify such Contractor in writing of such Claim, and such notice will include a copy of the Claim and any related correspondence or documentation from the third party asserting the Claim. Such Contractor and Commonwealth Indemnitee shall conduct its own, separate defense and retain separate counsel.

(b) A Contractor will not be liable for any settlement or compromise by an affected Commonwealth Indemnitee of a Third-Party Claim except with such Contractor's prior written consent, which consent will not be unreasonably withheld or delayed, or except where the settlement or compromise is approved by the court after such Contractor receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

## **ARTICLE 8**

### **ACCESS TO RECORDS; OWNERSHIP OF WORK PRODUCT**

#### **Section 8.01 Maintenance and Retention of Records**

With respect to this Agreement only, each Contractor will maintain and retain, or cause to be maintained and retained, proper books of records and accounts in which complete and correct entries will be made of its transactions in accordance with generally accepted accounting standards consistent with industry practices, which are reasonably acceptable to the Department. Such books and records will be maintained and retained, with respect to any of the Services, for a period of the later of (a) five years after final payment of any Allocable Costs incurred hereunder in relation to the applicable Services and (b) such period prescribed under applicable Law and, in each case, at a location situated within the contiguous United States of America as designated by such Contractor by delivery of notice of such location to the Department. Further, each Contractor will maintain and retain, or cause to be maintained and retained, such books and records in accordance with applicable Law, including those Laws applicable to projects receiving

federal-aid funds and Commonwealth bond proceeds. With respect to any subsequent and separate contracts entered into by the Department and the Contractors substantially in the forms of Exhibits C, D and E, as applicable, each Contractor's obligations pertaining to maintenance and retention of books, records and accounts shall be governed by such contracts and not this Agreement.

### **Section 8.02 Public Records**

(a) Each Contractor acknowledges that any Work Product the Department owns and any document of which the Department obtains a copy that relates to the Project may be considered public records under the Virginia Public Records Act, Sections 42.1-76 through 42.1-91 of the Code of Virginia or official records under the Virginia Freedom of Information Act, Sections 2.2-3700 through 2.2-3714 of the Code of Virginia, and as such may be subject to public disclosure. In the event of a request for disclosure of any such information, the Department will comply with Law. Should such information become the subject of a request for public disclosure, the Department will notify the applicable Contractor as soon as possible thereafter of such request and the date by which the Department anticipates responding.

(b) If a Contractor believes that any Work Product or any document subject to transmittal to or review by the Department under the terms of this Agreement contains trade secrets, proprietary information or other information that are exempt or protected from disclosure pursuant to Law, such Contractor shall make a written request to the Department in accordance with applicable Law requesting that such information be exempt or protected from disclosure. After receiving such written request, the Department shall make a written determination of the nature and scope of the protection to be afforded such information in accordance with applicable Law.

### **Section 8.03 Inspection and Audit Rights**

(a) Subject to Section 8.03(c), upon request, each Contractor will make available to the Department, including either of their employees, contractors, consultants, agents or designees, and allow each of them access to, such books, records and documents, information required to be maintained (and/or delivered) by such Contractor pursuant to this Agreement, and such other information (including any and all documents and other materials, in whatever form they may be kept, which support or underlie such books, records, documents and information) as they may reasonably request relating to this Agreement in the possession and control of such Contractor, any Contura-Related Party or Bizzack-Related Party, as applicable, or any of their applicable Representatives as Department may reasonably request, including but not limited to monitoring compliance with the terms and conditions of this Agreement. Such audits may extend to information developed by or on behalf of either or both Contractors pursuant to this Agreement. The Department will provide the applicable Contractor two Business Days prior written notice prior to exercising its rights to access and audit the each Contractor's books, records and documents pursuant to this Section 8.03(a) and Section 8.03(b); provided, however, that the Department may exercise such rights unannounced and without prior notice during a continuing Contractor Default or where there is good faith suspicion of fraud.

(b) Subject to Section 8.03(c), the Department and the Commonwealth, at the Department's own expense, will have the right to carry out an audit of information relating to (i) this Agreement or (ii) other information required to be maintained or delivered by a Contractor pursuant to this Agreement. Such audit may extend, without limitation, to calculations undertaken, and financial or business reports provided, by or on behalf of the Contractor pursuant to this Agreement. The Department or its employees, agents, auditors, attorneys and consultants, at the Department's own expense may examine, copy, take extracts from and audit all the books and records of the Contractor related to this Agreement. In addition, the Department or its agents, auditors, attorneys and consultants, at the Department's own expense, may conduct a re-audit, upon two Business Days prior written notice, and observe the business operations of the Contractor to confirm the accuracy of such books and records.

(c) Each Contractor reserves the right to assert exemptions from Persons other than the Department from disclosure for information that would be exempt or protected under Law from discovery or introduction into evidence in legal matters. Unless otherwise required by Law or this Agreement, the Contractor may make available copies of books, records and documents containing trade secrets or confidential proprietary information with such information redacted.

(d) Nothing contained in this Agreement will in any way limit the constitutional and statutory powers, duties and rights of elected Commonwealth officials, including the independent rights of the Commonwealth's Auditor of Public Accounts, in carrying out his or her legal authority.

(e) Each Contractor will cooperate with the Department and the other Persons mentioned in this Section 8.03 in the exercise of their rights hereunder.

(f) Subject to Section 8.02, the Department will keep confidential any information obtained from any Contractor, any Contura-Related Party, Bizzack-Related Party or their Representatives that (i) constitutes trade secrets or commercial or financial information (A) where the trade secrets or commercial or financial information are proprietary, privileged or confidential or (B) where disclosure of the trade secrets or commercial or financial information may cause competitive harm and (ii) is designated as such by such Contractor, Contura-Related Party, Bizzack-Related Party or their Representatives in writing to the Department, and the Department has determined that such information qualifies for exemption from disclosure under Law.

(g) Each Contractor shall provide, and shall cause its respective subcontractors to provide, FHWA access to books, records and documents relating to this Agreement consistent with applicable Law.

#### **Section 8.04 Work Product**

(a) Work Product Defined. The term "Work Product" has the meaning set forth in Exhibit A.

(b) Ownership of Work Product. The Department shall own all rights, title and interest in the Work Product free and clear of all claims, liens and encumbrances upon its receipt of such Work Product. The Department's ownership rights, include without restriction or

limitation, the right of the Department, and anyone contracting with the Department, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference to the Project; or (b) any subsequent procurement by the Department on another project. In receiving all rights, title and interest in the Work Product, the Department is deemed to own all intellectual property rights, copyrights, patents, and trade secrets in the Work Product, and each Contractor shall, at the request of the Department, execute all papers and perform all other acts that may be necessary (if any) to ensure that the Department's rights, title and interest in the Work Product are protected. The rights conferred herein to the Department include the Department's ability to use the Work Product without the obligation to notify or seek permission from the applicable Contractor.

(c) Use of Work Product at Department's Risk. The Department's use of the Work Product on any subsequent procurement by the Department on another project shall be at Department's sole risk, and the applicable Contractor neither warrants nor represents that the Work Product is suitable for use on another project without modification. The Department waives any rights to seek recovery from such Contractor for any claims, damages, liabilities, losses and expenses arising out of or resulting from Department's use of the Work Product on another project.

(d) License from Contractor to Department. Each Contractor grants to the Department a perpetual, irrevocable, fully paid-up, royalty-free, non-exclusive, worldwide license (including the right to grant sub-licenses and to transfer the license freely to third parties) to modify, copy, use and distribute, in each case in connection with the Project Section, such Contractor's trademarks and service marks that are incorporated into the Work Product.

(e) License from Department to Contractor. Subject to the terms and conditions of this Agreement, the Department hereby grants to the applicable Contractor a revocable, non-exclusive, non-transferable, non-sublicensable license to use and implement, solely in connection with the performance of the Services, the intellectual property rights described in Section 8.04(b) in such Work Product; provided, however, that such Contractor may grant a sublicense of this license to its subcontractors engaged in the performance of the Services. Such Contractor retains no other rights to use any such intellectual property rights. Each Contractor agrees that it shall not challenge the validity of the Department's title to all such intellectual property rights.

### **Section 8.05 Preliminary Design and Engineering, Design-Build Services Work Product**

Notwithstanding anything to the contrary in Section 8.04, ownership of any Work Product developed for or under any applicable Project Agreement will be governed by the ownership of work product provisions of such Project Agreement.

## **ARTICLE 9**

### **DEFAULTS AND REMEDIES**

#### **Section 9.01 Contractor Defaults**

The occurrence of any one or more of the following events during the Term, in each case applicable to a Contractor (and not to the other Contractor), will constitute a “Contractor Default” with respect to such Contractor (and not to the other Contractor) pursuant to this Agreement:

(a) any representation or warranty herein made by a Contractor is false or misleading in any respect on the date made and a material adverse effect upon the Project or the Department’s rights or obligations under this Agreement results therefrom, and such circumstance continues without cure for a period of 90 Days following the date the Department delivers to the applicable Contractor written notice thereof, with cure regarded as complete only when the adverse effects are remedied;

(b) a Contractor fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, which results in a material adverse effect upon the Project or the Department’s rights or obligations under this Agreement, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the applicable Contractor written notice thereof (giving particulars of the failure in reasonable detail) or for such longer period as may be reasonably necessary to cure such failure up to a maximum cure period of 180 Days; provided, that in the latter case, (i) such Contractor is proceeding with all due diligence to cure or cause to be cured such failure, (ii) the failure is capable of being cured within a reasonable period of time, and (iii) such failure is in fact cured within such period of time; provided, further that this Section 9.01(b) will not apply to events covered by other provisions of this Section 9.01;

(c) there occurs a Transfer of this Agreement or all or any portion of a Contractor’s Interest in contravention of Section 15.01;

(d) any Project Agreement is terminated for Contractor default under the terms of such Project Agreement;

(e) after exhaustion of all rights of appeal, (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of a Contractor, any affiliate of such Contractor (as “affiliate” is defined in 29 C.F.R. § 1471.905 or successor regulation of similar import), from bidding, proposing or contracting with any federal or Commonwealth department or agency, or (ii) a Contractor or any of its respective officers, directors, or Administering Employees have been convicted of, or plead guilty or *nolo contendere* to, a violation of Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation as a result in whole or in part of activities relating to any project in the Commonwealth, and such failure specified in clause (i) or (ii) continues without cure for a period of 90 Days following the date the Department delivers to the applicable Contractor written notice thereof (giving particulars of the failure in reasonable detail). If the offending Person is an officer, director or Administering Employee, cure will be regarded as complete when the applicable Contractor proves that such Person has been removed from any position or ability to manage, direct or control the decisions of such Contractor or to perform the Services; and if the Person debarred or suspended or subject to an agreement for voluntary exclusion is an affiliate of such Contractor (as “affiliate” is defined in 29 C.F.R. §

1471.905 or successor regulation of similar import), cure will be regarded as complete when such Contractor replaces such Person in accordance with this Agreement;

(f) a Contractor (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or files any other petition or answer seeking, consenting to or acquiescing in any reorganization, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any similar Law, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of such Contractor, or of all or any substantial part of its properties or of the Project or any interest therein;

(g) within 90 Days after the commencement of any proceeding against a Contractor seeking any reorganization, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any similar Law, such proceeding has not been dismissed, or, within 90 Days after the appointment, without the consent or acquiescence of such Contractor, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of such Contractor or of all or any substantial part of its properties or of the Project or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or, within 90 Days after the expiration of any such stay, such appointment has not been vacated;

(h) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to a Contractor or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, this Agreement is rejected, including a rejection pursuant to 11 U.S.C. § 365 or any successor statute; and

(i) a levy under execution or attachment has been made against all or any part of the Project or any interest therein (including a Contractor's Interest) as a result of any Lien created, incurred, assumed or suffered to exist by a Contractor or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 Days, unless such levy resulted from actions or omissions of the Department or its Representatives.

### **Section 9.02 Department Remedies upon Contractor Default**

Upon the occurrence of a Contractor Default, the Department may do any or all of the following as the Department, in its sole discretion, will determine:

(a) the Department may terminate the Development Rights of the Contractor that was the cause of the Contractor Default (the "Defaulting Contractor"), to the extent provided in Section 10.02;

(b) if the Contractor Default is by reason of the failure to pay undisputed monies to a third party arising out of this Agreement, then the Department may (but will have no obligation to) make payment on behalf of the Defaulting Contractor of such monies, and any amount so paid by the Department will be payable by the Defaulting Contractor to the Department within five Days after demand, including accrued interest in accordance with Section 15.23(b); provided, that (i) the Department will not incur any liability to the Defaulting Contractor, and the

Defaulting Contractor hereby irrevocably waives and releases any liability of the Department to the Defaulting Contractor, for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Contractor Default and (ii) the Department's cure of any Contractor Default will not waive or affect the Department's rights against the Defaulting Contractor by reason of the Contractor Default;

(c) the Department may cure the Contractor Default (but this will not obligate the Department to cure or attempt to cure a Contractor Default or, after having commenced to cure or attempted to cure a Contractor Default, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the Contractor Default, will be payable by the Contractor to the Department within five Days of demand, including accrued interest in accordance with Section 15.23(b); provided, that (i) the Department will not incur any liability to the Defaulting Contractor, and the Defaulting Contractor hereby irrevocably waives and releases any liability of the Department to the Defaulting Contractor, for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Contractor Default, and (ii) the Department's cure of any Contractor Default will not waive or affect the Department's rights against the Defaulting Contractor by reason of the Contractor Default; and

(d) the Department may exercise any of its other rights and remedies provided for under this Agreement or at law or in equity, subject to any limitations thereon set forth in this Agreement, including Section 15.09.

### **Section 9.03 Department Defaults**

The occurrence of any one or more of the following events during the Term will constitute a "Department Default" pursuant to this Agreement:

(a) any representation or warranty made by the Department herein is false or misleading in any respect on the date made and a material adverse effect upon the Project or any Contractor's rights or obligations under this Agreement results therefrom, and such circumstance continues without cure for a period of 90 Days following the date such Contractor delivers to the Department written notice thereof, with cure regarded as complete only when the adverse effects are remedied; or

(b) the Department fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, including any failure to pay undisputed amounts when due and payable and in accordance with this Agreement, which failure materially adversely affects any Contractor's Interest, and such failure continues without cure for a period of 90 Days following the date such Contractor delivers to the Department written notice thereof (giving particulars of the failure in reasonable detail) or for such longer period as may be reasonably necessary to cure such failure up to a maximum cure period of 180 Days; provided, that in the latter case, (i) the Department is proceeding with all due diligence to cure or cause to be cured such failure, (ii) the failure is capable of being cured within a reasonable period of time and (iii) such failure is in fact cured within such period of time.

### **Section 9.04 Contractor Remedies upon Department Default**

Upon the occurrence of a Department Default pursuant to this Agreement, the Contractor adversely affected by the Department Default (the “Default-Affected Contractor”) may by notice to the Department declare the Department to be in default and may do any or all of the following as the Default-Affected Contractor, in its discretion, will determine:

- (a) the Default-Affected Contractor may terminate its Development Rights to the extent provided in Section 10.03 and
- (b) the Default-Affected Contractor may exercise any of its other rights and remedies provided for under this Agreement or at law or in equity, subject to any limitations thereon set forth in this Agreement, including Section 15.09.

### **Section 9.05 Default under Project Agreement**

Notwithstanding anything to the contrary in this ARTICLE 9, any Contractor Default or Department Default that would be otherwise covered under the default provisions of any Project Agreement for the applicable Project Section, or portion thereof, will be governed by the applicable default provisions of such Project Agreement.

## **ARTICLE 10**

### **TERMINATION**

#### **Section 10.01 Termination Upon Expiration of Term**

Unless earlier terminated in accordance with the terms of this ARTICLE 10, all the rights and obligations of the parties hereunder will cease and terminate, without notice or demand, on the last Day of the Term.

#### **Section 10.02 Termination for Contractor Default**

- (a) At any time after the occurrence and during the continuance of a Contractor Default, the Department is entitled to terminate the Development Rights of the Defaulting Contractor.
- (b) If the Department elects to terminate the Development Rights of the Defaulting Contractor pursuant to this Section 10.02, the Department will deliver to the Defaulting Contractor written notice of its election to terminate, which termination will take effect not less than 30 Days after the delivery of such notice.
- (c) In the event of a termination under this Section 10.02 no termination compensation will be owed by the Defaulting Contractor to the Department under this Agreement. Nothing in this Section 10.02(c) shall be deemed to adversely affect a Contractor’s right to receive undisputed Allocable Costs due and owing.
- (d) A termination of the Development Rights of a Defaulting Contractor by the Department for Contractor Default which is later determined by a court of proper jurisdiction to be wrongful or in violation of this Agreement will be deemed to have been a termination for

convenience by the Department pursuant to Section 10.04 and no compensation will be owed to such Contractor under this Agreement.

**Section 10.03 Termination for Department Default**

(a) Subject to the provisions of this Section 10.03, the Default-Affected Contractor is entitled to terminate its Development Rights.

(b) If the Default-Affected Contractor elects to terminate its Development Rights, the Default-Affected Contractor will deliver to the Department a written notice of its election to terminate, which termination will take effect not less than 30 Days after the delivery of such notice.

(c) In the event of a termination pursuant to this Section 10.03, no termination compensation will be owed by the Department to the Default-Affected Contractor under this Agreement.

**Section 10.04 Termination for Convenience**

(a) The Department may terminate this Agreement, at any time after the Agreement Date, if it determines that, in its sole discretion, a termination is in the best interests of the Department. Termination pursuant to this Section 10.04 will not relieve any Contractor or the Department of their respective obligations for any Claims arising prior to termination.

(b) If the Department elects to terminate pursuant to this Section 10.04, the Department will deliver to the Contractors written notice of its election to terminate, which termination will take effect no less than 30 Days after delivery of such notice.

(c) In the event of termination pursuant to this Section 10.04, no termination compensation will be owed by the Department to any Contractor under this Agreement.

**Section 10.05 Contractor Actions Upon Termination**

(a) On delivery of notice of termination for any reason prior to the expiration of the Term, the provisions of this Section 10.05 will apply. The applicable Contractor will timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due to the applicable Contractor or the Department on account of termination. In connection with the expiration of the Term, certain provisions of this Section 10.05, as specified, will apply.

(b) The applicable Contractor will conduct all discussions and negotiations to determine the amount of any Allocable Costs incurred up to the effective date of any termination, and will share with the Department all data, documents and information pertaining thereto.

(c) The applicable Contractor will deliver to the Department on the date of expiration of the Term or on the effective date of any earlier termination; provided that all applicable Allocable Costs due and owing have been paid by the Department to such Contractor:

(i) all tangible personal property, reports, books, and records and, to the extent provided in ARTICLE 8, other Work Product; excluding, however, all machinery, equipment and tools, if any, owned or leased by the Contractor or any of its subcontractors and not incorporated or intended to be incorporated into the Project (it being agreed that the applicable Contractor may retain copies of all such reports, books and records consistent with its established records-retention policies in place as of the Agreement Date); and

(ii) a document granting all rights, title and interest in the Work Product in accordance with Section 8.04.

**Section 10.06 Liability After Termination; Consequences of Termination**

(a) If a Contractor's Development Rights are terminated by reason of a Contractor Default or a Department Default, such termination will not excuse the defaulting party from any liability arising out of such default as provided in this Agreement.

(b) If a Contractor's Development Rights are terminated by any reason other than a Contractor Default or a Department Default, neither the applicable Contractor nor the Department will have any further obligation or liability under this Agreement, except for performance of their respective obligations which are either expressly stated in this Agreement to survive termination or by their sense and context are intended to survive termination.

(c) The applicable Contractor and the Department will be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to the effective date of termination of the applicable Contractor's Development Rights, whether due to expiration or earlier termination of the Term, and such Contractor will not be liable for any costs, expenses and other amounts incurred in connection with this Agreement on and after such date, except (i) to the extent such costs, expenses and other amounts are included in the measure of any damages due to the Department arising out of or relating to the Contractor Default under this Agreement and (ii) for such other costs, expenses and other amounts incurred on or after such date, for which Contractor is liable under provisions of this Agreement that survive the termination of such Contractor's Development Rights.

(d) Regardless of the Department's prior actual or constructive knowledge thereof, no contract or agreement to which the applicable Contractor is a party (unless the Department is also a party thereto) as of the effective date of termination will bind the Department, unless the Department elects within 60 days after such effective date to assume such contract or agreement in writing. Except in the case of the Department's express written assumption, no such contract or agreement will entitle the contracting party to continue performance of work or services respecting the Project following the effective date of termination, or to any Claim, legal or equitable, against the Department.

(e) As of the effective date of termination of this Agreement, whether due to expiration or earlier termination of the Term, the applicable Contractor's Development Rights and all of the Contractor's Interest with respect to the applicable Contractor will automatically

terminate and expire, and all Liens created, permitted or suffered by the applicable Contractor will be automatically extinguished; provided, however, that such Contractor retains its right to (i) full payment of undisputed Allocable Costs until such time as the Department has paid such Allocable Costs and (ii) all Claims submitted in writing by the applicable Contractor to the Department as of the effective date of the termination, unless, by its nature, a Claim expires or becomes irrelevant upon termination.

**Section 10.07 Exclusive Termination Remedies**

(a) The Department and the Contractors hereby acknowledge and agree that they may only terminate this Agreement in accordance with the express terms hereof.

(b) ARTICLE 9 and this ARTICLE 10 set forth the entire and exclusive provisions and rights of the Department and the Contractors regarding termination of this Agreement, and any and all other rights at law or in equity to terminate or to payment of compensation upon termination are hereby waived to the maximum extent permitted by Law. The parties hereto agree that, upon any termination of this Agreement, the payments provided herein will constitute the Contractors' sole compensation pursuant to this Agreement.

**Section 10.08 Effect of Termination on Project Agreements**

Notwithstanding anything to the contrary in this ARTICLE 10, a termination of this Agreement or either Contractor's Development Rights will not affect, alter, or diminish any rights or obligations that a party may have under any Project Agreement.

**ARTICLE 11**

**DISPUTE RESOLUTION**

**Section 11.01 Dispute Avoidance and Resolution**

(a) The parties are fully committed to working with each other throughout the Term of this Agreement and agree to communicate regularly with each other at all times so as to avoid or minimize disputes and disagreements. If Disputes do arise, the applicable Contractor and the Department each commit to resolving such Disputes in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Services. Nothing in this Section 11.01 shall prejudice or limit a Contractor's right to submit written notice of a Claim in accordance with applicable Law.

(b) The applicable Contractor and the Department will first attempt to resolve all Disputes through best efforts and good faith negotiations between the applicable Contractor's and the Department's respective Project Managers. In the event of failure to resolve a Dispute at the Project Manager level, then the applicable Contractor or the Department may request that the Dispute be elevated to the applicable Contractor's Program Manager and the Department's Program Manager.

(c) In the event of failure to resolve a Dispute at the Program Manager level, then the applicable Contractor or the Department may request that the Dispute be elevated to the applicable Contractor's Vice President and the Department's Bristol District Engineer.

(d) If the Dispute cannot be resolved pursuant to Section 11.01(c) within 30 days of the date of the first meeting of such Contractor's Vice President and the Department's Bristol District Engineer, despite their best efforts, then the applicable Contractor and the Department will attempt to resolve all Disputes through best efforts and good faith negotiations between the Contractor Representative and the Chief Engineer.

(e) If the Dispute cannot be resolved through such Contractor's Representative and the Chief Engineer within 30 days of the date of the first meeting, despite their best efforts, then the applicable Contractor and the Department will attempt to resolve all Disputes through best efforts and good faith negotiations between the Contractor Representative and the Commissioner.

(f) A Contractor shall proceed in accordance with the requirements of, and subject to the rights, limitations and obligations under, Va. Code §§ 33.2-1101 through 33.2-1103. Satisfaction of the procedures set forth in this Section 11.01(f) will be a condition precedent to instituting a legal action in court; provided, that if the Department determines, in its sole discretion, that a Dispute involves an issue that poses an immediate and serious threat to the public health, safety and welfare, the Department will be entitled to take whatever steps it deems appropriate and to initiate litigation of the matter in court without first submitting the Dispute to the dispute resolution procedures of this Agreement.

### **Section 11.02 Conduct During Pendency of Dispute**

(a) Notwithstanding anything to the contrary in this Agreement, the parties will not be required to await the resolution of dispute proceedings regarding the reasons for terminating this Agreement before exercising such party's termination rights.

(b) Pending final resolution of any Dispute (except a Dispute regarding the cause for terminating this Agreement), the parties will continue to fulfill their respective obligations under this Agreement.

### **Section 11.03 Costs of Dispute Resolution**

Each party will bear its own attorneys' fees and costs in any Dispute or litigation arising out of or pertaining to this Agreement, and no party will seek or accept an award of attorneys' fees or costs, except as otherwise expressly provided herein.

## **ARTICLE 12**

### **RESERVED RIGHTS**

#### **Section 12.01 Exclusions from the Contractor's Interest**

The Contractors' rights and interests in the Project are the Contractors' Development Rights, which are for the purposes of enabling each Contractor to accomplish the Project Purposes. The Contractors' rights and interests consist only of those expressly granted by this Agreement, and specifically exclude all Reserved Rights.

**Section 12.02 Department Reservation of Rights**

(a) The Department may, at any time at its sole cost and expense, devote, use or take advantage of the Reserved Rights for any public purpose without any financial participation whatsoever by any Contractor. The Department hereby reserves to itself all ownership, development, maintenance, repair, replacement, operation, use and enjoyment of, and access to, the Reserved Rights.

(b) Each Contractor acknowledges and agrees that all rights to own, lease, sell, assign, transfer, utilize, develop or take advantage of the Reserved Rights are hereby reserved to the Department, and each Contractor will not engage in any activity infringing upon the Reserved Rights, it being agreed that the development and construction of the Project in accordance with this Agreement will not infringe upon the Reserved Rights.

**ARTICLE 13**

**REPRESENTATIONS; WARRANTIES AND FINDINGS**

**Section 13.01 Department Representations and Warranties**

The Department hereby represents and warrants to the Contractors, as of the Agreement Date, as follows:

(a) the Department is an agency of the Commonwealth and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;

(b) the person executing this Agreement on behalf of the Department has been authorized to execute and deliver this Agreement on behalf of the Department;

(c) neither the execution and delivery by the Department of this Agreement, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound;

(d) there is no action, suit, proceeding, investigation or litigation pending and served on the Department which challenges the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the Department official executing this Agreement, and the Department has disclosed to the Contractors any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Department is aware;

(e) this Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(f) the Department has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement; and

(g) the Department is in material compliance with all Laws and Governmental Approvals applicable to its obligations in connection with this Agreement.

### **Section 13.02 Contractor Representations and Warranties**

(a) Contura hereby represents and warrants to the Department as follows, as of the Agreement Date:

(i) Contura Energy, LLC is a duly organized and validly existing limited liability company created under the laws of the State of Delaware, in good standing in the State of Delaware, is qualified and authorized to conduct business in the Commonwealth as Contura Energy Virginia, LLC, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute, deliver and perform each and all of its obligations under this Agreement;

(ii) Contura has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement;

(iii) the person executing this Agreement on behalf of Contura has been duly authorized to execute and deliver this Agreement on behalf of Contura;

(iv) this Agreement has been duly authorized, executed and delivered by Contura and constitutes a valid and legally binding obligation of Contura, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(v) execution and delivery by Contura of this Agreement and the consummation of the transactions contemplated hereby or thereby, is not in conflict with and will not result in a default under or a violation of the governing instruments of Contura or any other agreements or instruments to which it is a party or by which it is bound;

(vi) there is no action, suit, proceeding, investigation or litigation pending and served on Contura which challenges Contura's authority to execute, deliver or perform, or the validity or enforceability of this Agreement, or which challenges the authority of Contura official executing this Agreement; and Contura has

disclosed to the Department any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contura is aware;

(vii) Contura is in material compliance with all Laws applicable to Contura or its activities in connection with this Agreement;

(viii) none of Contura or any affiliate of Contura (as "affiliate" is defined in 29 C.F.R. § 1471.905) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or Commonwealth department or agency; and

(ix) no event which, with the passage of time or the giving of notice, would constitute a Contractor Default on the part of Contura has occurred.

(b) Bizzack hereby represents and warrants to the Department as follows, as of the Agreement Date:

(i) Bizzack is a duly organized and validly existing limited liability company created under the laws of the Commonwealth of Kentucky, in good standing in the Commonwealth of Kentucky, is qualified and authorized to conduct business in the Commonwealth, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute, deliver and perform each and all of its obligations under this Agreement;

(ii) Bizzack has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement;

(iii) the person executing this Agreement on behalf of Bizzack has been duly authorized to execute and deliver this Agreement on behalf of Bizzack;

(iv) this Agreement has been duly authorized, executed and delivered by Bizzack and constitutes a valid and legally binding obligation of Bizzack, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(v) execution and delivery by Bizzack of this Agreement and the consummation of the transactions contemplated hereby or thereby, is not in conflict with and will not result in a default under or a violation of the governing instruments of Bizzack or any other agreements or instruments to which it is a party or by which it is bound;

(vi) there is no action, suit, proceeding, investigation or litigation pending and served on Bizzack which challenges Bizzack's authority to execute, deliver or perform, or the validity or enforceability of this Agreement, or which challenges

the authority of Bizzack official executing this Agreement; and Bizzack has disclosed to the Department any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Bizzack is aware;

(vii) Bizzack is in material compliance with all Laws applicable to Bizzack or its activities in connection with this Agreement;

(viii) none of Bizzack or any affiliate of Bizzack (as “affiliate” is defined in 29 C.F.R. § 1471.905) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or Commonwealth department or agency; and

(ix) no event which, with the passage of time or the giving of notice, would constitute a Contractor Default on the part of Bizzack has occurred.

### **Section 13.03 Department’s Findings Under the Act**

The Department, as the Responsible Public Entity with respect to the Project, makes the following findings:

(a) there is a public need for timely development and/or operations of the Project to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, increasing capacity and enhancing economic sufficiency (all as more fully defined in Section 33.2-1800 of the Code of Virginia);

(b) the actions taken by the Department pursuant to the Act facilitate the development, design, and construction the Project, and such public need may not be wholly satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated;

(c) the Development Rights granted hereunder authorizing the Contractors to develop, design, and construct the Project may result in the Project’s availability to the public in a more timely, more efficient and less costly fashion, thereby serving the public safety and welfare;

(d) the Project, its interconnections with existing transportation facilities, and the Contractors’ plans for the development, design, and construction of the Project are reasonable and compatible with the Commonwealth transportation plan and with local comprehensive plans;

(e) the estimated cost of developing, designing, and constructing the Project is reasonable in relation to similar transportation facilities;

(f) the Contractors’ plans will result in the timely construction of the Project;

(g) the Department will continue to have fee title or good and valid interest to the Project and the Project will remain open for use by members of the public as a public road;

(h) through this Agreement the Department intends to encourage investment in the Commonwealth by the Contractors to facilitate the development, design and construction of the Project; and

(i) the terms and conditions of this Agreement serve the public purpose of the Act.

## ARTICLE 14

### CONTRACTING PRACTICES AND PUBLIC WELFARE CONSIDERATIONS

#### **Section 14.01 Obligation to Refrain from Discrimination**

Each Contractor covenants and agrees that it will not discriminate and it will require all subcontractors not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion or the presence of any sensory, mental or physical handicap in the permitting, design, acquisition, construction or management of the Project, nor will either Contractor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees, contractors, and vendors or with reference to the use, occupancy or enjoyment of or access to the Project; provided, that the prohibition against discrimination on the basis of sensory, mental or physical handicap will not apply if the particular disability prevents the proper performance of the particular person involved.

#### **Section 14.02 Contracting**

(a) Each Contractor will not enter into any contract at any level with any Person if that Person or any of its affiliates (as “affiliate” is defined in 29 C.F.R. § 1471.905), or any of their respective officers, directors and employees, (i) is then suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or Commonwealth department or agency, (ii) has been convicted, pled guilty or *nolo contendere* to a violation of Law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity or (iii) is then barred or restricted from owning, operating or providing services for the Project under Law, including the Foreign Investment and National Security Act of 2007, 50 U.S.C. App. 2170 (HR556).

(b) Each Contractor will include a provision in each subcontract for the performance of the Services requiring the subcontractor (i) to report information pertaining to subparagraphs (a)(i) to (iii) above as and when applicable and (ii) to maintain all licenses required by Law applicable to the Services provided by such subcontractor.

(c) From and after the Agreement Date, each Contractor will be solely responsible for paying each subcontractor and any other Person to whom any amount is due from the applicable Contractor for services, equipment, materials and supplies in connection with the Services performed by such subcontractor and Person and shall comply with Section 2.2-4354 of the Code of Virginia.

#### **Section 14.03 Public Safety and Welfare**

The parties recognize and agree that protection of the health, safety and welfare of the public and all persons engaged in connection with the performance of the Contractors' obligations pursuant to this Agreement is a priority. Accordingly, each Contractor will comply with the following provisions, along with all other Laws:

(a) the Contractor will comply, and will require all subcontractors to comply, with all construction safety and health standards established by Law. Neither the Contractor nor any of its subcontractors will require any worker to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to their health or safety, as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, as may be amended from time to time; and

(b) the Contractor shall suspend any Services which, in the sole discretion of the Department, presents a risk to the public health, safety or welfare, and to take such other actions as the Department may require to prevent such risk; provided, that if it is determined in accordance with the Dispute resolution provisions in ARTICLE 11 that the Contractor was in compliance with its obligations under this Agreement, then Contractor shall be entitled to all Allocable Costs actually incurred in connection with such suspension order.

#### **Section 14.04 Federal Immigration Reform and Control Act**

In accordance with Section 2.2-4311.1 of the Code of Virginia, each Contractor certifies that it does not and agrees that it will not, during the Term, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. Each Contractor further agrees that it will require all of its subcontractors to certify that they do not and will not knowingly employ an unauthorized alien as defined by such Act.

#### **Section 14.05 Disadvantaged Business Enterprises and SWaM**

Each Contractor shall comply with the provisions contained in the applicable Project Agreement with respect to Disadvantaged Business Enterprises and Small, Women-Owned and Minority-owned Business (SWaM); provided, that any failure by either Contractor to comply with such provisions will be subject to the default and remedy provisions of such Project Agreement and not of this Agreement.

### **ARTICLE 15**

#### **MISCELLANEOUS**

#### **Section 15.01 Transfers by the Contractor and Department**

(a) The Department may Transfer its interests in this Agreement to any other Commonwealth public agency or entity as permitted by Law, provided, however, that the successor or assignee (i) has assumed all of the Department's obligations, duties and liabilities under this Agreement and provided the Contractors with reasonable assurances of legal authority and sufficient financial resources to honor and perform same and (ii) will not be required to have financial resources in excess of those available to the Department; provided, further, that nothing

in the foregoing proviso shall preclude the Department's Transfer of its interests in this Agreement as is otherwise required by federal or Commonwealth statute or final, non-appealable order of any court of competent jurisdiction. The Department will give notice to the Contractors as soon as possible following a decision to Transfer its interests in this Agreement.

(b) Neither Contura nor Bizzack will Transfer its rights or obligations under this Agreement without the prior written consent of the Department, which consent shall not be unreasonably withheld, conditioned, or delayed. In exercising its right to consent or to withhold its consent to an assignment, the Department may consider, among other things, (i) the absence of reasonable assurances of the legal authority of the assignor or proposed assignee to effect such assignment or the legal authority and/or financial capacity of the proposed assignee to perform the assignor's obligations and (ii) the availability of guaranties and other security offered by the proposed assignor to ensure performance of the proposed assignee. For purposes of this Section 15.01(b), a Change in Control of either Contura or Bizzack is not, and shall not be deemed to be, a Transfer by Contura or Bizzack, respectively; provided, however, that the Contractor for which a Change in Control is anticipated shall give the Department prior, written notice of such pending Change in Control, in no case later than the effective date thereof, and such Contractor shall provide such documents as the Department may reasonably request with respect to any such Change in Control.

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

(d) Subject to this Section 15.01, this Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their successors and permitted assigns.

### **Section 15.02 Ethical Standards**

(a) Each Contractor has adopted and provided (or will adopt and provide no later than 90 days after the Agreement Date) copies to the Department of its written policies establishing ethical standards of conduct for all its directors, officers and supervisory or management personnel in dealing with the Department and employment relations. Such policies including any amendments or modifications will include standards of ethical conduct concerning the following:

(i) restrictions on gifts and contributions to, and lobbying of, any Commonwealth Party and any of their respective commissioners, directors, officers and employees;

(ii) protection of employees from unethical practices in the selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

(iii) protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false Claim), unethical or unsafe actions or failures to act by the Contractor or its personnel or any of its subcontractors;

(iv) restrictions on directors, members, officers or supervisory or management personnel of the Contractor engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

(v) restrictions on use of an office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of the Contractor or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

(vi) adherence to the Department's organizational conflict of interest rules and policies pertaining to the hiring of any consultant which has assisted the Department in connection with the negotiation of this Agreement or the conduct of Oversight Services for the Project, as may be amended from time to time.

(b) Each Contractor will cause its directors, members, officers and supervisory and management personnel, and require those of its subcontractors, to adhere to and enforce the adopted policy on ethical standards of conduct. Each Contractor will establish reasonable systems and procedures to promote and monitor compliance with the policy.

(c) Without limiting the foregoing provisions of this Section 15.02, each Contractor further agrees: (i) no gifts, gratuities, or favors of any nature whatsoever will be given or offered by any Contura-Related Party or Bizzack-Related Party (as applicable) to personnel of the Department; and (ii) no Contura-Related Party or Bizzack-Related Party (as applicable) will employ any personnel of the Department for any services during the Term, without the prior written consent of the Department. If the Department determines, after investigation, that a Contura-Related Party or Bizzack-Related Party (as applicable) or any of its employees, representatives, or agents of any person acting in its behalf have violated this provision, the such Contura-Related Party or Bizzack-Related Party (as applicable) may, at the discretion of the Department, be disqualified from bidding on future contracts with the Department for a period of six months from the date of the Department's determination of such a violation. Any implicated employees, agents, or representatives of the Contractor may be prohibited from working on any contract awarded by the Department for the period of disqualification.

### **Section 15.03 Allocable Costs Payment Process**

(a) If the Department and the applicable Contractor agree to execute a Preliminary Design and Engineering Services Agreement or a Design-Build Agreement, then the Department and such Contractor shall include in the price of the applicable Preliminary Design and Engineering Services Agreement or Design-Build Agreement, as a separate Work Package as defined in the applicable Preliminary Design and Engineering Services Agreement or Design-Build Agreement, the Allocable Costs due and owing under Section 4.01(e) and Section 5.08, as applicable. Such Allocable Costs shall be invoiced and paid in accordance with the terms and

conditions of the applicable Preliminary Design and Engineering Services Agreement or Design-Build Agreement.

(b) If the Department and the applicable Contractor do not execute a Preliminary Design and Engineering Services Agreement or a Design-Build Agreement and terminate negotiations, then the following payment process for Allocable Costs shall apply:

(i) Within 30 days after notice of termination of negotiations by the Department or the applicable Contractor, such Contractor shall submit for the Department's review and approval an invoice for the Allocable Costs due and owing under Section 4.01(e) and Section 5.08, as applicable. The invoice shall be in a form acceptable to the Department and contain all supporting documentation required under this Agreement.

(ii) The Department shall make payment within 30 days after the Department's receipt of each properly submitted and accurate invoice. The Department's payment shall comply with Va. Code § 2.2-4347, *et seq.*, which addresses prompt payment. Notwithstanding anything to the contrary in this Agreement, the Department shall pay the applicable Contractor all undisputed amounts in an invoice within the times required by this Agreement. All undisputed payments due and unpaid shall bear interest in accordance with Va. Code § 2.2-4355 from the date such undisputed amount was due until paid.

(iii) If the Department determines that such Contractor is not entitled to all or part of an invoice, it will notify the Contractor in writing at least seven days prior to the date payment is due. The notice shall indicate the specific amounts the Department intends to withhold, the reasons and contractual basis for the withholding, and the specific measures the Contractor must take to rectify the Department's concerns. The Contractor and the Department will attempt to resolve the Department's concerns prior to the date payment is due. If the parties cannot resolve such concerns, the Contractor may pursue its rights under this Agreement.

#### **Section 15.04 Authorized Representatives; Project Managers**

(a) Each Contractor and the Department hereby designates the following individuals as its initial Contractor Representative(s) and Department Representative(s), respectively, to administer this Agreement on its respective behalf:

(i) For Contura:

Blake Hall  
Contura Energy Virginia, LLC  
340 Martin Luther King Jr. Boulevard  
Bristol, TN 37620  
Email: blake.hall@conturaenergy.com

(ii) For Bizzack:

Gary Taylor  
Bizzack Construction, LLC  
3009 Atkinson Avenue, Suite 200  
Lexington, KY 40509  
Email: gtaylor@bizzackconstruction.com

(iii) For the Department:

Chief Engineer  
Virginia Department of Transportation  
1401 E. Broad Street  
Richmond, VA 23219  
Email: garrett.moore@vdot.virginia.gov

and

CFX Program Manager  
Virginia Department of Transportation  
870 Bonham Road  
Bristol, VA 24203  
Email: mandy.cox@vdot.virginia.gov

(b) Each Contractor Representative and the Department Representatives will be reasonably available to each other during the Term and will have the authority to issue instructions and other communications on behalf of the applicable Contractor and Department, respectively, and will be the recipient of notices and other written communications from the applicable party pursuant to this Agreement (except any notice initiating or relating to the dispute resolution procedures of ARTICLE 11 will be given in accordance with Section 15.05). However, the parties acknowledge that such Contractor Representative and Department Representative may not have the authority to make decisions binding upon any Contractor or the Department, except to the extent expressly authorized by such Contractor or the Department, as the case may be, in writing (including Department policies and procedures). In the event a Contractor or the Department designates a different Contractor Representative or Department Representative (as applicable), such party will give the other parties written notice of the identity of and contact information for the new Contractor Representative(s) or Department Representative(s), as the case may be.

(c) Each Contractor and the Department will identify to the other parties its respective Project Managers within 30 days after the Agreement Date. In the event a Contractor or the Department designates different Project Managers thereafter, it will give the applicable parties written notice of the identity of and contact information for the new Project Manager.

### **Section 15.05 Notices**

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party or the other parties, the same will be in writing and will not be effective for any purpose

unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by electronic mail (“e-mail”) transmission in portable document format (\*.PDF), where the email transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation  
1401 E. Broad Street  
Richmond, VA 23219  
Attention: Chief Engineer  
Email: garrett.moore@vdot.virginia.gov

*with copies to:*

Bristol District Engineer  
Virginia Department of Transportation  
870 Bonham Road  
Bristol, VA 24203  
Email: randy.hamilton@vdot.virginia.gov

and

CFX Program Manager  
Virginia Department of Transportation  
414 East Main Street  
Lebanon, VA 24266  
Email: mandy.cox@vdot.virginia.gov

and

Office of the Attorney General  
202 North Ninth Street  
Richmond, VA 23219  
Attention: Chief Transportation Section  
Email: jrallen@oag.state.va.us

If to Contura:

Mark Manno  
Contura Energy Virginia, LLC  
340 Martin Luther King Jr. Boulevard  
Bristol, TN 37620  
Email: mark.manno@conturaenergy.com

*with copies to:*

Blake Hall  
Contura Energy Virginia, LLC  
340 Martin Luther King Jr. Boulevard  
Bristol, TN 37620  
Email: blake.hall@conturaenergy.com

and

Charles E. Wall, Esq.  
Troutman Sanders LLP  
1001 Haxall Point  
Richmond, VA 23219  
Email: chuck.wall@troutmansanders.com

If to Bizzack:

Gary Taylor  
Bizzack Construction, LLC  
3009 Atkinson Avenue, Suite 200  
Lexington, KY 40509  
Email: gtaylor@bizzackconstruction.com

*with copies to:*

Lester Wimpy  
Bizzack Construction, LLC  
3009 Atkinson Avenue, Suite 200  
Lexington, KY 40509  
Email: lwimpy@bizzackconstruction.com

and

Gary Weitkamp, Esq.  
Reed Weitkamp Schell & Vice PLLC  
500 West Jefferson Street, Suite 2400  
Louisville, KY 40202  
Email: gweitkamp@rwsvlaw.com

(b) Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally or via email will be deemed delivered upon receipt (provided, that, with respect to email delivery, the original is thereafter delivered as aforesaid), and if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier.

**Section 15.06 Binding Effect**

Subject to the limitations of Section 15.01, this Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Agreement is made to any of the parties hereto, such reference also will be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

**Section 15.07 Relationship of Parties; Affiliates**

(a) The relationship of each Contractor to the Department will be one of an independent contractor, not an agent, partner, lessee, joint or co-venturer or employee, and neither the Department nor any Contractor will have any rights to direct or control the activities of the other or their respective Affiliates, contractors or consultants, except as otherwise expressly provided in this Agreement.

(b) Officials, employees and agents of any Contractor or the Department will in no event be considered employees, agents, partners or representatives of any other party hereto.

(c) Neither Contura nor Bizzack shall allow any of their respective Affiliates to perform any Services without a written contract between Contura or Bizzack, as applicable, and the respective Affiliate related to such Services. Such Affiliate shall be deemed a subcontractor for purposes of this Agreement.

**Section 15.08 No Third-Party Beneficiaries**

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement, except rights expressly contained herein for the benefit of the Commonwealth Indemnitees.

**Section 15.09 Limitation on Consequential Damages**

Except as expressly provided in this Agreement to the contrary, no party will be liable to the other parties for punitive damages or special, indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory under this Agreement. The foregoing limitation will not, however, in any manner:

(a) prejudice the Department's right to recover liquidated damages under the terms of any Design-Build Agreement;

(b) limit any Contractor's liability for any type of damage arising out of such Contractor's obligation to indemnify, protect and hold each Commonwealth Indemnitee harmless from Third-Party Claims under ARTICLE 7 and elsewhere in this Agreement;

(c) limit any Contractor's liability for any type of damage to the extent covered by the proceeds of insurance obtained by such Contractor; or

(d) limit the amounts the Department or any Contractor may owe under the express provisions of this Agreement, or any Preliminary Design and Engineering Services Agreement or Design-Build Agreement.

**Section 15.10 Waiver**

(a) No waiver by any party of any right or remedy pursuant to this Agreement will be deemed to be a waiver of any other or subsequent right or remedy pursuant to this Agreement. The consent by one party to any act by the other party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(b) No act, delay or omission done, suffered or permitted by one party or its agents will be deemed to waive, exhaust or impair any right, remedy or power of such party pursuant to this Agreement, or to relieve the other party from the full performance of its obligations pursuant to this Agreement.

(c) No waiver of any term, covenant or condition of this Agreement will be valid unless in writing and executed by the waiving party.

(d) The acceptance of any payment or reimbursement by a party will not (i) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Agreement, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

(e) No custom or practice between the parties in the administration of the terms of this Agreement will be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

**Section 15.11 No Brokers**

Each party represents and warrants that it has not dealt with any real estate or business opportunity broker or agent or any finder in connection with this Agreement. Each party agrees, to the extent permitted by Law, to indemnify, protect and hold harmless the other party against any Claim for commission, finder's fee or like compensation asserted by any real estate or business opportunity broker, agent, finder or other Person claiming to have dealt with the indemnifying party in connection with this Agreement.

**Section 15.12 Governing Law; Compliance with Law and Federal Requirements**

(a) This Agreement will be governed by and construed in accordance with the Laws of the Commonwealth.

(b) Each Contractor will keep fully informed of and comply and require its Contractors to comply with Law. Each Contractor will execute and file the documents, statements, affidavits and other filings required under any Law required by or affecting this Agreement or the execution of the Services. Each Contractor will permit examination of any records made subject to such examination by such Law.

(c) Each Contractor will comply and require its subcontractors to comply with all Laws applicable to a transportation project that receives Federal credit or funds.

(d) Each Contractor acknowledges and agrees that the FHWA has certain approval rights with respect to the Project, including the right to provide certain oversight and technical services with respect to the Services. In such circumstances, each Contractor will cooperate with FHWA and provide such access to the Project and information as FHWA may request in the exercise FHWA's duties, rights and responsibilities in connection with the Project.

### **Section 15.13 Use of Police Power**

Nothing in this Agreement limits the authority of the Department to exercise its regulatory and police powers granted by Law.

### **Section 15.14 Survival**

All representations and warranties, the dispute resolution procedures, access to records, the indemnifications, limitations, releases, obligations to pay Allocable Costs, provisions with respect to the Work Product, post-termination obligations and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Services will survive the expiration or earlier termination of this Agreement and/or the completion of the Services.

### **Section 15.15 Subpoena**

Except as provided for in Section 33.2-206 of the Code of Virginia, each Contractor may subpoena any Department personnel; provided, that the applicable Contractor will pay for such personnel's time at its fully burdened rate (including overhead and fringe benefits), together with all out-of-pocket expenses incurred, no later than 30 Days after the applicable Contractor's receipt of an invoice reasonably documenting the amount of such time provided.

### **Section 15.16 Construction and Interpretation of Agreement**

(a) The language in all parts of this Agreement will in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly and collectively by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of

this Agreement, this Agreement will not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction will be utilized.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, will be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each other term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by Law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith will accept as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

(c) The captions of the articles and sections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this “Agreement” mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument; provided, however, that references in this instrument to this “Agreement” shall exclude the Pre-ARCA Amendments. Any references to any covenant, condition, obligation and/or undertaking “herein,” “hereunder” or “pursuant hereto” (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument will be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. All references to a subsection or clause “above” or “below” refer to the denoted subsection or clause within the section in which the reference appears. Unless expressly provided otherwise, all references to “Articles” and “Sections” refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement, words which have well-known technical or construction industry meanings are used in this Agreement in accordance with such recognized meaning. Wherever the word “including,” “includes” or “include” is used in this Agreement, except where immediately preceded by the word “not”, it will be deemed to be followed by the words “without limitation”.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

(f) This Agreement is intended to be complementary and consistent and to be read together as a complete agreement. In the event of any conflict or inconsistency between the Articles of this Agreement and the exhibits to this Agreement, the conflict or inconsistency will be resolved by applying the following order of document precedence, from highest to lowest:

- (i) Amendments to the articles of this Agreement and Definitions;

- (ii) the Articles of this Agreement and Definitions; and
- (iii) the other exhibits to this Agreement, as amended.

**Section 15.17 Prompt Payment**

Pursuant to Va. Code § 2.2-4354, each Contractor agrees that, within seven days following receipt of amounts from the Department in payment of Allocable Costs incurred through, but not by, such Contractor but instead by any subcontractor to such Contractor, the Contractor shall either: (i) pay the subcontractor for the proportionate share of the total payment received from the Department attributable to the subcontractor's supplies or materials provided or work or services performed by the subcontractor or (ii) notify the Department and the subcontractor, in writing, of such Contractor's intention to withhold all or a part of the subcontractor's payment, specifying the reason for the non-payment. Each Contractor also agrees that it shall include in all of its subcontracts a provision that: (1) obligates such Contractor to pay interest to subcontractors on all amounts owed by such Contractor that remain unpaid after seven days following receipt of monies from the Department for supplies or materials provided or work or services performed by any subcontractor, except for amounts withheld as allowed in the preceding sentence; (2) states, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month."; and (3) obligates each subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 15.17 with respect to each lower-tier subcontractor. A Contractor's obligations to pay an interest charge to a subcontractor pursuant to this Section 15.17 shall not be construed to be an obligation of the Department, nor shall any modification to this Agreement be allowed for the purpose of providing reimbursement for the interest charge.

**Section 15.18 Counterparts**

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**Section 15.19 Entire Agreement; Amendment**

(a) THIS AGREEMENT CONSTITUTES THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN. EXCEPT WITH RESPECT TO THE SIXTH AMENDMENT TO ASSIGNMENT AND AS EXPRESSLY PROVIDED IN SECTION 2.02 WITH RESPECT TO THE PRE-ARCA WORK, ALL PRIOR WRITTEN AND PRIOR OR CONTEMPORANEOUS VERBAL AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND/OR PRACTICES RELATIVE TO THE FOREGOING ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS AGREEMENT MAY BE ALTERED, AMENDED OR REVOKED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY EACH PARTY HERETO, OR ITS PERMITTED SUCCESSOR OR ASSIGNEE. NO VERBAL AGREEMENT OR IMPLIED COVENANT WILL BE HELD TO VARY THE TERMS HEREOF, ANY STATUTE, LAW OR CUSTOM TO THE CONTRARY NOTWITHSTANDING.

(b) This Agreement attempts to set forth in full all requirements applicable under the Act as to the development, design and construction of the Project and attempts to define in full the rights and responsibilities of each party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Agreement, the parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the Act, recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

**Section 15.20 Payment of Damages and Other Amounts by the Department**

(a) THE DEPARTMENT'S PAYMENT OF ANY DAMAGES, LOSSES OR ANY OTHER AMOUNTS DUE AND OWING BY THE DEPARTMENT PURSUANT TO THIS AGREEMENT WILL BE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY AND ALLOCATION BY THE CTB.

(b) Upon determination of such damages or such other amounts due and owing by the Department, the Department will with all practical dispatch consistent in all respects with Law and its obligations pursuant to this Agreement:

(i) deliver to the Governor and the Director of the Department of Planning and Budget of the Commonwealth, before December 1 with respect to any such payment requested to be appropriated by the next regular session of the General Assembly, a statement of the amount of any such payment due or expected to be due and a request that the Governor include in his or her budget to be delivered to the next session of the General Assembly a provision that there be appropriated such amounts for such purpose to the extent required, from any legally available funds;

(ii) use its diligent efforts to have (A) the Governor include, in each biennial or any supplemental budget the Governor presents to the General Assembly, the amounts set forth in any statement delivered pursuant to (i) above, (B) the General Assembly appropriate and reappropriate, as applicable, such amounts to or on behalf of the Department for the purpose of paying any damages or other amounts due and owing by the Department to the applicable Contractor pursuant to this Agreement, and (C) the CTB allocates such appropriated amounts as applicable for payment to the applicable Contractor; and

(iii) notify the applicable Contractor promptly upon becoming aware of any failure by (A) the Governor to include such amounts in his budget delivered to the next session of the General Assembly, (B) the General Assembly to appropriate such amounts during such next session of the General Assembly or (C) the CTB to so allocate such amounts for payment to the applicable Contractor.

**Section 15.21 Taxes**

Each Contractor is solely responsible for the payment of Taxes accrued or arising out of the performance of its obligations pursuant to this Agreement.

**Section 15.22 Payments to Department or Contractor**

(a) Except as otherwise expressly provided herein, payments due to the Department or any Contractor hereunder, as applicable, will be due and payable within 30 Days of receipt by the applicable Contractor or the Department, as applicable, of an invoice therefor, together with any supporting documentation.

(b) Each party will be entitled to deduct, offset or withhold from any amounts due from one party to the other party any undisputed amounts then due and owing from such other party.

**Section 15.23 Interest on Overdue Amounts**

Any amount not paid when due pursuant to this Agreement will bear interest from the date such payment is due until payment is made (after as well as before judgment) (a) with respect to amounts owed by the Department to a Contractor, at the rate of interest described in Va. Code § 2.2-4355(B), subject to the exceptions at Va. Code § 2.2-4355, and (b) with respect to amounts owed by Contractor to the Department, at the rate of interest described in Va. Code § 2.2-4805(B), in either case, which interest will be payable on demand. Interest will be compounded annually and payable on the date on which the related overdue amount is paid.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK,

SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Amended and Restated Comprehensive Agreement to Develop the U.S. Route 121 Project as of the Agreement Date.

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

By: \_\_\_\_\_  
Charles A. Kilpatrick, P.E.  
Commissioner of Highways

**CONTURA ENERGY, LLC**  
a Delaware limited liability company registered to transact  
business in Virginia as Contura Energy Virginia, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BIZZACK CONSTRUCTION, LLC**  
a Kentucky limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_