

EXHIBIT X

FORCE ACCOUNT PAYMENT PROVISIONS

The provisions in this Exhibit X will apply to any Work performed on a force account basis pursuant to Section 14.02(e) of the Agreement (“Force Account Work”), including any Force Account Work performed by any Contractor. The Concessionaire will submit an invoice with all required supporting documentation for the Force Account Work to the Department on a monthly basis.

The rates for labor, equipment and materials to be used for the Force Account Work will be compensated in the following manner:

- (a) **Labor:** Unless otherwise approved, the Concessionaire will receive the rate of wage or scale as set forth in its most recent payroll for each classification of laborers, forepersons, and superintendent(s) who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the Force Account Work. If overtime work is authorized, payment will be at the normal overtime rate set forth in the Concessionaire’s most recent payroll. If workers performing the class of labor needed have not been employed on the Project prior to the Department’s issuance of the applicable Directive Letter, mutually agreed on rates will be established. However, the rates shall be not less than those predetermined for the Project, if applicable. An amount equal to 45 percent of the approved force account payroll will be included in the payment for labor to cover administrative costs, profit, and benefits and/or deductions normally paid by the Concessionaire.
- (b) **Insurance and Tax:** The Concessionaire will receive an amount equal to 25 percent of the approved force account payroll, excluding administrative costs referenced in Section (a) above, as full compensation for property damage and liability, workers’ compensation insurance premiums, unemployment insurance contributions, and social security taxes of the Force Account Work.
- (c) **Materials:** The Concessionaire will receive the actual cost of materials, accepted by the Department, that are delivered and used for the Force Account Work including taxes, transportation, and handling charges paid by the Concessionaire for such materials, but not including labor and equipment rentals as herein set forth, to which 15 percent of the cost will be added for administrative costs and profit. The Concessionaire shall make every reasonable effort to take advantage of trade discounts offered by material suppliers. Any discount received shall pass through to the Department. Salvageable temporary construction materials will be retained by the Department, or their appropriate salvage value shall be credited to the Department, as agreed upon by the Department and the Concessionaire.

(d) **Equipment:** The Concessionaire shall provide the Department a list of all equipment to be used in the Force Account Work. For each piece of equipment, the list shall include the serial number; date of manufacture; location from which equipment will be transported; and, for rental equipment, the rental rate and name of the company from which it is rented. The Concessionaire will be paid rental rates for pieces of machinery, equipment, and attachments necessary for prosecution of the Force Account Work that are approved for use by the Department and rented. Equipment rental will be measured by time in hours of actual time engaged in the performance of the Force Account Work and necessary traveling time of the equipment within the Project Right of Way or source of supply and the Project. Hourly rates will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Rental Rate Blue Book* rate adjustment tables that are current at the time the Force Account Work is authorized. Adjustment factors or rate modifications indicated in the *Rental Rate Blue Book* will not be considered once acceptable rates are determined. Hourly rates for equipment on standby will be at 50 percent of the rate paid for equipment performing the Force Account Work. Operating costs shall not be included in the standby rate. For the purposes herein “standby time” is defined as the period of time equipment ordered to the jobsite by the Department is available on-site for the Force Account Work but is idle for reasons not due to the fault of the Concessionaire, or normally associated with the efficient and necessary use of that equipment in the overall operation of the Force Account Work.

Payment will be made for the total hours the equipment is performing the Force Account Work. When equipment is performing the Force Account Work less than 40 hours for any given week and is on standby, payment for standby time will be allowed for up to 40 hours, minus hours performing the Force Account Work. Payment will not be made for the time that equipment is on the Project in excess of 24 hours prior to its actual performance in the Force Account Work. An amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be paid for all hours the equipment is performing the Force Account Work. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or equipment not authorized by the Department.

The Concessionaire will be paid freight cost covering the moving of equipment to and from the specific force account operation, provided such cost is supported by an invoice showing the actual cost to the Concessionaire. However, such payment will be limited to transportation from the nearest source of available equipment. If equipment is not returned to the nearest equipment storage lot, but is moved to another location, the freight cost paid will not exceed the cost of return to the nearest storage lot.

The rates for equipment not listed in the *Rental Rate Blue Book* schedule shall not exceed the hourly rate being paid for such equipment by the Concessionaire at the time of the applicable Directive Letter. In the absence of such rates, prevailing rates being paid in the area where the authorized Force Account Work is to be performed shall be used.

If the Concessionaire does not possess or have readily available equipment necessary for performing the Force Account Work and such equipment is rented from a source other than a company that is an Affiliate of the Concessionaire, payment will be based on actual invoice rates, to which 15 percent of the invoice cost will be added for administrative costs and profit. If the invoice rate does not include the furnishing of fuel, lubricants, repairs, and servicing, the invoice rate will be converted to an hourly rate, and an amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be added for each hour the equipment is performing the Force Account Work.

- (e) **Miscellaneous:** No additional allowances will be made for attachments that are common accessories for equipment as defined in the *Rental Rate Blue Book*, general superintendents, timekeepers, secretaries, the use of small hand held tools or other costs for which no specific allowance is herein provided. However, the Concessionaire will receive compensation equal to the cost of any bond, special railroad insurance premiums, and other additional costs necessary for the specific Force Account Work, as determined by the Department. The Concessionaire shall supply documented evidence of any such costs.
- (f) **Compensation:** The compensation as set forth in this Exhibit X shall be accepted by the Concessionaire as payment in full for the Force Account Work performed on a force account basis. At the end of each day that the Force Account Work is performed, the Concessionaire's representative and the Department shall compare and reconcile records of the hours of the Force Account Work and equipment, labor and materials used in the Force Account Work. Such accounting may not include actual costs or labor rates where these are not available but shall be used to verify quantities, types of materials or labor, and number and types of equipment.

If all or a portion of the Force Account Work is performed by a separate Contractor, the Concessionaire will be reimbursed for the actual and documented costs of administering the applicable Contract, but not to exceed 10% of the value of such Contract. The amount resulting will not be subject to any additional charges. The itemized statements of all costs, as required below, shall be submitted on a form that separates the subcontracted portions of the force account labor, materials, and equipment from the other force account costs.

(g) **Statements:** Payments will not be made for the Force Account Work until the Concessionaire has furnished the Department with duplicate itemized statements of the cost for the Force Account Work, detailed as follows:

1. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson, and superintendent;
2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of equipment;
3. quantities of materials, prices, and extensions; and
4. transportation of materials.

Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used for the Force Account Work are not specifically purchased for the Force Account Work, but are taken from the Concessionaire's stock, then in lieu of the invoices, the Concessionaire shall furnish an affidavit certifying that such materials were taken from the Contractor's stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented the Concessionaire's actual cost.