

TEAMING AGREEMENT

THIS TEAMING AGREEMENT ("Teaming Agreement") is entered into this _____ day of _____, 201____ (*"Effective Date"*) by and between _____ ("Contractor") and _____ ("DBE").

WITNESSETH :

WHEREAS, Contractor is a Construction Rental and Sales Equipment provider throughout the *United States, Canada, and Mexico* ; and

WHEREAS, DBE is a *Certified Disadvantaged Business Enterprise*, and a Concrete Contractor in the *Commonwealth of Virginia*, and possesses certain managerial, administrative and financial capabilities and resources; and

WHEREAS, Contractor and DBE may agree to team on various construction projects, including but not limited to the Downtown Tunnel/Midtown Tunnel/ Martin Luther King Extension Project with VDOT ("Projects"); and

WHEREAS, the Parties desire to define the nature and extent of their relationship;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties do hereby agree as follows :

ARTICLE I PURPOSE AND AUTHORITY

1 .1 *Purpose.* The purpose of this Teaming Agreement shall be to set forth the terms and conditions under which the parties may work on Projects.

1 .2 *Relationship Between the Parties.* Contractor and DBE shall act as independent contractors in the performance of this Agreement and Projects. Neither party shall act as an agent for or parent of the other party . Nothing in this Agreement shall be deemed to create a partnership, joint venture or formal business entity of any kind.

1 .3 *Conflict of Interest.* Nothing in this Agreement shall prevent, restrict or limit in any way the right, freedom or privilege of any party thereof to conduct or engage in any business, profession or activity whatsoever, whether independently or with others, without any accountability to any other party and nothing herein shall obligate either party to work on any Project with the other party unless both parties agree to work on such Project.

1.4 *Authority of Parties.* Neither party acting alone shall have the authority to bind, act or assume any obligations or responsibility for or on behalf of the other party.

1.5 *Contractual Agreements.* For each Project the parties agree to work on together, the Parties shall execute a separate contract agreement, the terms and conditions of which are incorporated herein by reference and will set forth the agreed upon financial terms, operational responsibilities and any other matters applicable to such Project.

ARTICLE II FISCAL MATTERS

2.1 *Books and Records.* Each party shall maintain its own books and records. The same shall be maintained in accordance with generally accepted accounting principles.

ARTICLE III EMPLOYEES

3.1. *Non Hire.* Neither party shall, without the prior written consent from the other party, make any employment agreement with or permit the employment of any person who has been an employee of the other party, as the case may be, within the earlier of six (6) months after such employee terminates employment with such other party, or within six (6) months after termination of this Agreement . Nothing herein shall prevent the hiring of an employee who responds to broad-based recruiting efforts such as advertising on the internet or other media for the general public. This provision shall survive termination of this Agreement.

ARTICLE IV INSURANCE

4.1. *Insurance.* The parties shall maintain insurance as follows:

A. Comprehensive or Commercial Insurance. Parties shall each maintain during the term of this Agreement, for the protection of each other and the owner of the Project, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance with a Combined Single Limit of not less than *Five Million Dollars (\$5,000,000.00)* for each occurrence, including, but not limited to, Personal Injury Liability, Blanket Contractual Liability and Products Liability, covering only the operations and activities of each party individually and, upon request, shall provide each other with a certificate evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice of cancellation to the other party. Contractor and DBE shall each be named as additional insureds under the respective policies .

B. Property Insurance. Contractor and DBE shall each maintain a system o f

coverage (either through purchased insurance, self-insurance, or a combination thereof) to keep their respective property insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance.

C. Workers Compensation. Each party shall maintain workers compensation insurance covering its employees in the amounts as required by all applicable federal and state laws relating to wages, hours, working conditions, social security and workers` compensation.

ARTICLE V RESTRICTION ON TRANSFERS

5.1 *Prohibition Against Transfer*. Except as otherwise provided for herein, neither party may sell, assign, transfer, encumber or otherwise dispose ("Transfer") of any interests under this Agreement without the prior written consent of the other party. Should any party violate this section in any manner, the Transfer shall be deemed void ab initio, and of no effect.

5.2 *Assumption by Assignees*. Any transferee or assignee to whom any interests under this Agreement may be transferred under the terms of this Agreement shall take such interest subject to all the terms and conditions of this Agreement and shall not be considered to have title to such interest until said transferee or assignee shall have accepted and assumed the terms and conditions of this Agreement by a written instrument and such other documents reasonably required by the other party.

ARTICLE VI DEFAULT AND TERMINATION

6.1 *Events of Default*. Any one or more of the events enumerated below shall constitute an Event of Default:

A. The adjudication of a party as insolvent or the voluntary filing by any party of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for such party under the Federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors; or the giving of notice by any party to any governmental body of insolvency or pending insolvency or suspension of the operations of such party; or the making by any party of an assignment for the benefit of its creditors or the taking of any other similar action for the protection or benefit of its creditors;

B. Failure to fulfill any obligations under this Teaming Agreement or under any contract agreement entered into pursuant to this Teaming Agreement.

C. Failure of DBE to maintain its status as a Certified Disadvantaged Business Enterprise.

6.2 *Default Termination.* If either party breaches a material provision hereof or an Event of Default occurs (“collectively "Cause"), the non-breaching/non-defaulting party shall give the other party notice of such Cause . If the Cause is remedied within thirty (30) days of the date notice is delivered as provided herein ("Cure Period") the notice shall be null and void. If the Event of Default is the result of failure of DBE to fulfill its obligations under a Contract Agreement, the applicable Cure Period, if any, shall be set forth in the Contract Agreement. If such Cause is not remedied within the Cure Period, the party giving *notice* shall have the right to immediately terminate this Agreement without further prior notice upon expiration of the Cure Period. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights or remedies available to either party in the Contract Agreement, at law or in equity.

6.3 *Events of Termination.* This Agreement shall be terminated upon the occurrence of any of the following “Events of Termination” :

- A. Both Parties agree in writing to terminate this Agreement;
- B. The non-breaching/non-defaulting party exercises its right to terminate pursuant to Section 6 .2 hereof .
- C. For any reason or no reason at all, either party provides not less than thirty (30) days written notice of termination to the other party.

6.4 *Outstanding Obligations at Termination.* In the event this agreement is terminated, the parties agree to enter into good faith negotiations and cooperate in the resolution of any outstanding issues, including the operation of any ongoing Contract Agreements.

ARTICLE VII INDEMNIFICATION

7.1 *Indemnification.* Each party shall defend, indemnify and hold harmless the other party from and against any and all claims, demands, liabilities, losses damages, costs and expenses, including but not limited to, reasonable attorney fees and court costs, arising out of or resulting from the negligence or misconduct of the indemnifying party, its agents or employees in the performance of its obligations pursuant to this Agreement or any obligation imposed by any Contract Agreement entered into by the parties. In the event any claims, demands, liabilities, losses, damages, costs or expenses arise out of or result from the joint negligence or misconduct of Contractor and DBE, their agents or employees, each party shall bear its own attorneys fees and court costs and the amount of such claims, demands, liabilities, losses or damages in proportion to such party’s percentage of fault . This provision shall survive

termination, cancellation or expiration of this Agreement.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

8.1 *Notice.* Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing and shall be deemed to be delivered when received in the United States postal mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the respective addresses set forth below or at such other address as the parties may advise:

Contractor _____

DBE _____

8.2 *Headings.* The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

8.3 *Parties Bound.* This agreement is binding on and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

8.4 *Counterparts.* This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original.

8.5 *Confidentiality.* Each party acknowledges that, by virtue of this Teaming Arrangement, it may acquire knowledge of certain formulas, manuals, procedures, lists, systems, processes, methods, software, materials, costs of operation, prices, financial data, promotional methods, concepts, ideas and other information and techniques including those acquired through association with third parties of the other party, usable in the business, all of which constitute trade secrets and proprietary information of the other party (collectively, the "Confidential Information"). Neither party shall use the Confidential Information of the other party except in connection with the operations of the Teaming Arrangement. Neither party shall disclose such Confidential Information to third parties, including any other entities who may acquire an interest in such party, and shall take all reasonable precautions to prevent disclosure of Confidential Information to third parties. Neither party shall photocopy or otherwise duplicate any Confidential Information of the other party without the prior written consent of the other party. Each party's Confidential Information shall remain the exclusive property of such party and shall be returned to such party immediately upon the termination of this Agreement. Access to or use of such Confidential Information shall not create any right, title, interest, or copyright by the other party in such Confidential Information. The

provisions of this Article shall remain in effect during the term of this Agreement and for a period of five (5) years following the termination of this Agreement.

8.6 *Trademarks, Trade Names & Service Marks.* DBE shall not use or cause to be used ("Trademark name, etc."), or any other trade names, trademarks or service marks of Contractor or any of its affiliates or subsidiaries without the prior written consent of Contractor. Contractor shall not use or cause to be used any trade names, trademarks or service marks of DBE without the prior written consent of DBE.

8.7 *Waiver of Jury Trial.* Contractor and DBE each hereby waive their rights to a trial by jury with respect to any dispute or litigation between them arising under or related to this Agreement.

8.8 *Dispute Resolution.* The parties shall attempt in good faith to resolve all disputes that arise hereunder by discussion and negotiation. Any dispute that is not resolved after good faith negotiations shall be submitted to a non-binding arbitration. The parties shall jointly select a single arbitrator who shall have the authority to hold hearings and render decision pursuant to the arbitration rules of the American Arbitration Association. The expenses of the arbitration shall be borne equally by the parties, except that each party shall pay for the costs of its experts, evidence and legal counsel.

8.9 *Attorney Fees.* In the event of a dispute between the parties regarding the terms of or performance under this Agreement where this matter is submitted to a court of law, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys fees.

8.10 *Waiver.* A waiver of any failure to perform under this Agreement or any Contract Agreement shall neither be construed as nor constitute a waiver of any subsequent failure.

8.11 *Force Majeure.* Neither party shall be liable to the other for the failure to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, acts of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy-related closings, governmental rules or regulations, failure of third parties to perform their obligations with respect to materials supply, etc. or like causes beyond the reasonable control of such party and without the fault of the party effected by such Force Majeure event. A Force Majeure event shall not relieve the party of its obligations hereunder, but rather shall extend the time for such party to perform to the extent of the duration of such Force Majeure event.

8.12 *Prior Agreements Superseded.* This Agreement and any Contract Agreements entered into by the parties constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement supersedes any prior understandings, written or oral agreements between the parties respecting the within subject matter. This Agreement may not be amended or modified except by written document signed by an authorized signatory of each party .

IN WITNESS EREOF, the undersigned do hereby execute this instrument on the day first written above .

CONTRACTOR:

DBE:

Signature

Signature

Printed Name & Title

Printed Name & Title