

EXHIBIT V**FORM OF PAYMENT BOND**

BOND NO.
PENAL SUM: \$[●]

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Commonwealth of Virginia, Department of Transportation, a state agency of the Commonwealth of Virginia (the “Owner”), has awarded to CAPITAL BELTWAY EXPRESS LLC (“Obligee” which term hereinafter includes its successors and assigns) an Amended and Restated Comprehensive Agreement dated December 19, 2007 (the “Original Agreement”) to develop, design, build, finance, operate, and maintain the Interstate 495 HOV/HOT Lanes Project (the “Project”); and

WHEREAS, the Owner and Obligee have entered into a four amendments between April 30, 2014, and January 29, 2019, for various minor issues. The Fourth Amendment establishes a process for the Obligee to submit to the Owner a Binding Proposal to extend the 495 Express Lanes further north; and

WHEREAS, the Owner and the Obligee intend to enter into a further amended ARCA (“Second ARCA”) under which the Obligee will add approximately two miles of high-occupancy toll lanes to the existing 495 HOV/HOT Lanes on Interstate 495 to the Project north of their current terminus, the 495 Express Lanes Northern Extension (the “Project NEXT”); and

WHEREAS, Obligee intend to has entered into the NEXT Design-Build Contract between Concessionaire and Design-Builder (the “DB Contract”) with [_____], as Design-Builder (hereinafter, the “Principal”), bearing the date of [_____], for the performance of certain work defined within the DB Contract as the “NEXT Work,” which DB Contract, together with any and all changes, extensions of time, alterations, modifications, or additions thereto or to the work to be performed thereunder, shall hereafter be referred to as the “Contract;” and

WHEREAS, it is one of the conditions of the Second ARCA and the Contract that these presents shall be executed.

NOW THEREFORE, we, the undersigned Principal, and [_____] (the “Surety”, [and collectively, the “Co-Sureties”]) jointly and severally, bind ourselves, our heirs, executors, administrators, successors, and assigns to the Obligee to pay for labor, materials, and equipment furnished for use in the performance of the Contract, which Contract is deemed a part hereof as if said Contract were fully set forth herein. [Any reference to the “Surety” in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.] **This Bond is in the amount of []**.

The following terms and conditions shall apply with respect to this Bond:

1. If the Principal promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Obligee and VDOT from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Contract, then the Surety and the Principal shall have no obligation under this Bond.
2. The Surety's obligation to the Obligee under this Bond shall arise after the Obligee, or VDOT has promptly notified the Principal and the Surety (at the address described in Section 13) of claims, demands, liens, or suits against the Obligee, the Obligee's property, or VDOT or its property, by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Contract, and tendered defense of such claims, demands, liens, or suits to the Principal and the Surety.
3. When the conditions of Section 2 have been satisfied, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Obligee and VDOT against a duly tendered claim, demand, lien, or suit.
4. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - a. Claimants, who do not have a direct contract with the Principal,
 - i. have furnished a written notice of non-payment to the Principal, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - ii. have sent a Claim to the Surety (at the address described in Section 13).
 - b. Claimants, who are employed by or have a direct contract with the Principal, have sent a Claim to the Surety (at the address described in Section 13).
5. If a notice of non-payment required by Section 4 is forwarded or otherwise provided by the Obligee or VDOT to the Principal that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 4.
6. When a Claimant has satisfied the conditions of Sections 4(a) or (b), whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

- a. Send an answer to the Claimant, with a copy to the Obligee and VDOT, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - b. Pay or arrange for payment of any undisputed amounts.
7. The Surety's failure to discharge its obligations under Section 6(a) or Section 6(b) shall not be deemed to constitute a waiver of defenses the Surety or Principal may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 6(a) or Section 6(b), the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. **This Bond is in the amount of [_____].** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Obligee to the Principal under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By the Principal furnishing and the Obligee accepting this Bond, they agree that all funds earned by the Principal in the performance of the Contract are dedicated to satisfy obligations of the Principal and Surety under this Bond, subject to the Obligee's or VDOT's priority to use the funds for the completion of the Contract work.
10. The Surety shall not be liable to the Obligee, Claimants, or others for obligations of the Principal that are unrelated to the Contract. Neither the Obligee nor VDOT shall be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction within the Commonwealth of Virginia after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 4, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Obligee, or the Principal shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however, accomplished, shall be sufficient compliance as of the date received.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Principal and Obligee shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 “Claim” means a written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials, or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Contract;
- .4 a brief description of the labor, materials, or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Contract;
- .6 the total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

15.2 “Claimant” means any subcontractor or supplier of any tier who furnishes labor, materials, or equipment for use in the performance of the Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the NEXT Project is located. The intent of this Bond shall be to include without limitation in the terms “labor, materials, or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural, and engineering services required for performance of the Contract, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at [_____] on this [_____] day of [_____] , 20[____].

PRINCIPAL (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

EXHIBIT V**FORM OF PERFORMANCE BOND****BOND NO.****PENAL SUM: \$[●]****KNOW ALL WHO SHALL SEE THESE PRESENTS:**

THAT WHEREAS, the Commonwealth of Virginia, Department of Transportation, a state agency of the Commonwealth of Virginia (the “Owner”), has awarded to CAPITAL BELTWAY EXPRESS LLC (“Concessionaire” which term hereinafter includes its successors and assigns) an Amended and Restated Comprehensive Agreement dated December 19, 2007 (the “Original Agreement”) to develop, design, build, finance, operate, and maintain the Interstate 495 HOV/HOT Lanes Project (the “Project”); and

WHEREAS, the Owner and Concessionaire have entered into four amendments between April 30, 2014, and January 29, 2019 for various minor issues. The Fourth Amendment establishes a process for the Concessionaire to submit to the Owner a Binding Proposal to extend the 495 Express Lanes further north; and

WHEREAS, the Owner and the Concessionaire intend to enter into a further amended ARCA (“Second ARCA”) under which the Concessionaire will add approximately two miles of high-occupancy toll lanes to the existing 495 HOV/HOT Lanes on Interstate 495 to the north of their current terminus, the 495 Express Lanes Northern Extension (the “Project NEXT”); and

WHEREAS, Concessionaire intends to enter into the NEXT Design-Build Contract between Concessionaire and Design-Builder (the “DB Contract”) with [_____], as Design-Builder (hereinafter, the “Principal”), bearing the date of [_____], for the performance of certain work defined within the DB Contract as the “NEXT Work,” which DB Contract, together with any and all changes, extensions of time, alterations, modifications, or additions thereto or to the work to be performed thereunder, shall hereafter be referred to as the “Contract;” and

WHEREAS, it is one of the conditions of the Second ARCA and the Contract that these presents shall be executed.

NOW THEREFORE, we, the undersigned Principal, and [_____] (the “Surety”, [and collectively, the “Co-Sureties”]) are firmly bound and held unto the Concessionaire as the “Obligee” in the penal sum of [_____] Dollars (\$[_____]) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents. [Any reference to the “Surety” in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.]

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

If the Principal shall, in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, and obligations under the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, if the Principal shall indemnify and save harmless the Obligee, its directors, officers, employees and agents, as therein stipulated, and if the Principal shall reimburse upon demand of the Obligee any sums paid the Principal that exceed the final payment determined to be due upon completion of the NEXT Work, then these presents shall become null and void; otherwise, they shall remain in full force and effect unconditionally, irrevocably and shall be non-cancellable.

The following terms and conditions shall apply with respect to this Bond:

1. The provisions of the Contract are deemed a part hereof as if said Contract were fully set forth herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. This Bond specifically guarantees the performance of each and every obligation of Principal related to the NEXT Work under the Contract, as they may be amended and supplemented, including, but not limited to, its liability for Liquidated Damages as specified in the Contract, but not to exceed the penal sum of this Bond.

3. The guarantees contained herein shall survive Final Completion of the NEXT Work called for in the Contract with respect to those obligations of Principal which survive Final Completion.

4. Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, Surety shall promptly:

- a) with the consent of the Obligee, arrange for the Principal to perform and complete the Contract;
- b) complete the NEXT Work in accordance with the terms and conditions of the Contract, through its agents or through independent contractors; or
- c) obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the NEXT Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Project NEXT Contract Price incurred by the Obligee resulting from the Principal's default; or

- d) waive its right to perform and complete, arrange for completion, or obtain a new contractor and, with reasonable promptness under the circumstances, pay the penal sum of the Bond to the Owner within 30 days of such waiver.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond within 30 days of Surety's receipt of notice that the Principal has been declared to be in default by the Oblige, Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Oblige to Surety demanding that Surety perform its obligations under this Bond, and such Oblige shall be entitled to enforce any remedy available to the Oblige.

6. If Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Oblige shall not be greater than those of the Principal under the Contract, and the responsibilities of the Oblige to Surety shall not be greater than those of Oblige under the Contract. To the limit of the penal sum of this Bond, but subject to commitment of the unpaid balance of the Project NEXT Contract Price, Surety is obligated without duplication for:

- a) the responsibilities of the Principal for correction of defective work and completion of the NEXT Work;
- b) additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and
- c) Liquidated Damages and any other sums due and owing under the Contract.

7. No alteration, modification, or supplement to the Contract or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety hereby waives notice of any such alteration, modification, or supplement, including changes in time, to the Contract.

8. Correspondence or claims relating to this Bond shall be sent to Surety at the following address: [_____]

9. No right of action shall accrue on this Bond to or for the use of any entity other than the Oblige or its successors and assigns.

10. [If multiple or co-sureties] The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Oblige will have no obligation to deal with multiple sureties hereunder. All correspondence from the Oblige to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Oblige designating a

single new representative, signed by all of the Co-Sureties. The initial representative shall be [____], whose contact information is [_____].

11. If any provision of this Bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.

12. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at [_____] on this [_____] day of [____], 20[____].

PRINCIPAL (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name)

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

EXHIBIT []
FORM OF MULTIPLE OBLIGEE RIDER
(Performance Bond)

MULTIPLE OBLIGEE RIDER
(PERFORMANCE BOND)

This Multiple Obligee Rider (this “Rider”) is executed concurrently with and shall be attached to and form a part of Performance Bond No. [●] (hereinafter referred to as the “Performance Bond”).

WHEREAS, [●], a [●] (hereinafter called the “Principal”) entered into a written agreement bearing the date of [●], 20[●] (hereinafter called the “Contract”) with CAPITAL BELTWAY EXPRESS, LLC (hereinafter called the “Primary Obligee”) for the performance of design and construction work for Project NEXT; and

WHEREAS, the Primary Obligee requires under the Contract that Design-Builder provide a performance bond and that both (i) the Commonwealth of Virginia Department of Transportation, a state agency of the Commonwealth of Virginia (“VDOT”) and (ii) [●], the “Collateral Agent”, and collectively with VDOT, the “Additional Obligees”) be named as additional obligee(s) under the performance bond; and

WHEREAS, Principal and [●], a [●] duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia (the “Surety”) [and [●], and collectively, the “Co-Sureties”) have agreed to execute and deliver this Rider concurrently with the issuance of the Performance Bond, upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

1. The Additional Obligees are hereby added to the Performance Bond as named obligee(s).
2. The aggregate liability of the Surety (or Co-Sureties) under the Performance Bond to any or all of the Primary Obligee and the Additional Obligees, as their respective interests may appear, is limited to the penal sum of the Performance Bond, the Additional Obligees’ rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.
3. The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) strictly in accordance with the terms of said Contract as to payments and

shall perform all other obligations to be performed under said Contract at the time and in the manner therein set forth, as said Contract may be amended or modified from time to time.

4. The Surety may, at its option, make any payments under the Bond by check issued jointly to all of the obligees and delivered to VDOT at [address/wire instructions TBD].

5. An Additional Obligee may enforce the Performance Bond if such Additional Obligee has provided to the Surety written certification that such Additional Obligee has the right to enforce the Performance Bond under its direct agreement(s) between or among the Primary Obligee and Additional Obligees.

The Principal and the Surety (and Co-Sureties) have caused these presents to be duly signed and sealed this ____ day of _____, 20__.

PRINCIPAL (full legal name):
Address:

By: _____
Title:
Contact Name:
Phone: ()

SURETY (full legal name):
Address:

By: _____
Title:
Contact Name:
Phone: ()

[Note: Date of this Rider must be the same as the date of the Bond.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

EXHIBIT V**FORM OF EXPEDITED DISPUTE RESOLUTION (EDR) PERFORMANCE BOND****BOND NO.****PENAL SUM: \$[●]****KNOW ALL MEN BY THESE PRESENTS, THAT:**

WHEREAS, the Virginia Department of Transportation (“Owner”) has awarded to Capital Beltway Express, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (“Concessionaire” which term hereinafter includes its successors and assigns) an Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, dated as of December 19, 2007 (as amended, amended or restated, modified or supplemented from time to time, the “495 ARCA”) to develop, design, build, finance, operate, and maintain the Route 495 HOT Lanes in Virginia Project (the “Project”); and

WHEREAS, Owner and Concessionaire [intend to enter] *OR* [have entered] into a further amended 495 ARCA (the “Second 495 ARCA”) under which the Concessionaire will add approximately [two] miles of high-occupancy toll lanes to the existing 495 HOT lanes north of their current northern terminus (the “Project NEXT”); and

WHEREAS, Concessionaire has entered into the [Project NEXT Design-Build Contract] (the “Contract”) with [●], a [●], as Design-Builder (hereinafter, the “Design-Builder”), bearing the date of [●], for the performance of certain work defined within the Contract as the “Project NEXT Work,” which Contract, together with any and all changes, extensions of time, alterations, modifications, or additions thereto or to the work to be performed thereunder, shall hereafter be referred to as the “Contract,” and

WHEREAS, one of the conditions of the Second 495 ARCA and the Contract is that Design-Builder provide this duly executed instrument (“Bond”).

NOW THEREFORE, we, the undersigned Design-Builder, and [●], a [●] duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia (the “Surety”) [and [●], and collectively, the “Co-Sureties”) are firmly bound and held unto the Concessionaire as the “Obligee” in the penal sum of [●] Dollars (\$[●]) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, and bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents. [Any reference to the “Surety” in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.]

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

If the Design-Builder shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, and obligations under the Contract,

including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Design-Builder's part to be kept and performed at the time and in the manner therein specified, if the Design-Builder shall indemnify and save harmless the Obligee, its directors, officers, employees and agents, as therein stipulated, including from all costs and damages which it may suffer by reason or failure of the Design-Builder so to do, and shall fully reimburse the Obligee all costs and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, and if the Design-Builder shall reimburse upon demand of the Obligee any sums paid the Design-Builder which exceed the final payment determined to be due upon completion of the Project NEXT Work, then these presents shall become null and void; otherwise they shall remain in full force and effect unconditionally, irrevocably and shall be non-cancellable.

The following terms and conditions shall apply with respect to this Bond:

1. The provisions of the Contract are deemed a part hereof as if said Contract were fully set forth herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. This Bond specifically guarantees the performance of each and every obligation of Design-Builder related to the Project NEXT Work under the Contract, as they may be amended and supplemented, including but not limited to, its liability for [Liquidated Damages] as specified in the Contract, but not to exceed the penal sum of this Bond.

3. The guarantees contained herein shall survive Final Completion of the Project NEXT Work called for in the Contract with respect to those obligations of Design-Builder which survive Final Completion.

4. Whenever Design-Builder shall be, and is declared by the Obligee to be in Design-Builder Default (as defined in Paragraph 13) under the Contract, Surety shall, within thirty (30) days of receipt of a letter from Obligee in the form set forth in Schedule A (the "Demand"), at the Surety's expense, take one of the following actions (provided that Surety shall, within seven (7) days of receipt of the Demand, notify Owner in writing which action Surety intends to take):

- (a) with the prior written consent of the Obligee, arrange for the Design-Builder to remedy the Design-Builder Default and continue to perform and complete the Contract; or
- (b) remedy the Design-Build Default and undertake completion of the Project NEXT Work in accordance with the terms and conditions of the Contract, through its agents or through independent contractors; or
- (c) obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the CBE Northern Extension Work acceptable to the Obligee, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured

with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 5 of this Bond in excess of the unpaid balance of the [Contract Price] resulting from the Design-Builder Default; or

- (d) waive its right to perform and complete, arrange for completion, or obtain a new contractor, and pay the full penal sum of this Bond to the Obligee; or
- (e) deny liability in whole or in part and notify Obligee thereof in writing citing the reasons for denial.

5. If Surety elects to act under Subparagraph 4(a), 4(b), or 4(c) above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Design-Builder under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of Concessionaire under the Contract. To the limit of the penal sum of this Bond, but subject to commitment of the unpaid balance of the [Contract Price] to mitigate costs and damages on the Contract, Surety is obligated without duplication for:

- (a) the responsibilities of the Design-Builder for correction of defective work and completion of the Project Network;
- (b) actual damages, including additional legal, design, engineering, professional and delay costs resulting from Design-Builder Default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and
- (c) [Liquidated Damages] and any other sums due and owing under the Contract.

6. In the event that Surety disputes its liability under this Bond as provided in Paragraph 4(e), which includes any allegations of fraud, such dispute shall be determined in the first instance in accordance with the dispute resolution process (“DRP”) attached hereto as Schedule B. If Surety does not proceed as provided in Paragraph 4, then Surety shall be deemed to be in default on this Bond without a need for any additional notice by Obligee and the claim shall be deemed to be in dispute for purposes of this Paragraph 6. A Decision, as defined in Schedule B, shall be rendered within thirty (30) days of the Adjudication Commencement Date, or as otherwise extended pursuant to the DRP. The Decision shall be binding on the Surety, Design-Builder, and Obligee as to their respective rights and obligations under this Bond but subject to each party’s right to commence a *de novo* appeal of the Decision to a court of competent jurisdiction at any time. The parties shall immediately begin to comply with the Decision and the terms of this Bond notwithstanding of, and during, any appeal *de novo* of the Decision and unless or until such time as a court of competent jurisdiction issues a final order or ruling vacating or modifying the Decision, either in whole or in part, at the conclusion of any *de novo* appeal of the Decision (the “Obligation to Comply with the Decision”). Surety’s Obligation to Comply with the Decision is limited by the penal sum of this Bond.

7. The parties acknowledge that the Obligation to Comply with the Decision is of the essence of the Bond, and the parties agree that Surety’s failure to fulfill its Obligation to Comply with the Decision will cause irreparable harm to Obligee and Design-Builder. Accordingly, Surety

waives and releases any right it may have to initiate any action in court seeking a stay of its obligations arising pursuant to the Decision or seeking a stay of enforcement of the Decision. Surety's only recourse to court processes in connection with the Decision is to file for a *de novo* appeal of the Decision while continuing to fulfill its Obligation to Comply with the Decision. In any such *de novo* appeal or in any action seeking enforcement of the Decision, the Surety (a) waives any right to file for an interim stay of its obligations arising pursuant to the Decision or to seek a stay of enforcement of the Decision, (b) waives any right to object to or contest an action brought to enforce specific performance of Surety's obligations arising pursuant to the Decision and waives all defenses in such an action, and (c) consents to an order or ruling directing and requiring Surety to perform its obligations arising pursuant to the Decision, and that an action for such an order or ruling may be sought on an expedited (emergency) basis under the rules of the court. The parties' Obligation to Comply with the Decision does not alter any party's right to pursue a *de novo* appeal of the Decision in a court of competent jurisdiction.

8. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Project NEXT Work to be performed with respect to Project NEXT, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Design-Builder of the Contract, or this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

9. Correspondence or claims relating to this Bond shall be sent to Surety at the following address: [●]

10. Schedules A and B are an integral part of this Bond and are specifically incorporated herein as if set out in full in the body of this Bond.

11. If any provision of this Bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.

12. Any provision in this Bond which conflicts with applicable laws, shall be deemed modified to conform to applicable laws. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

13. "Design-Builder Default" means failure of the Design-Builder, which has not been remedied by the end of the applicable cure period (if any) set forth in the Contract and in accordance therewith, to perform or otherwise to comply with any term or condition under the Contract.

14. This Bond includes "Additional Obligees" named in the Multiple Obligee Rider dated [●], referencing this Bond (No. [●]), and attached hereto. The Additional Obligees may enforce this Bond under the circumstances set forth in the respective agreements entered into by Obligee and the respective Additional Obligee, as described in the Multiple Obligee Rider.

15. *[Note: Use in case of multiple sureties (“Co-Sureties”) or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]* [The Co-Sureties agree to empower and designate a single “Lead Surety” with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from Obligee to the Co-Sureties and all claims under this Bond shall be sent to the Lead Surety and shall be deemed served upon all Co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Obligee designating a new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be [●].]

[Signature Page Follows]

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this ____ day of _____ 20__.

DESIGN-BUILDER (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

**SCHEDULE A
FORM OF DEMAND
DEMAND**

[Date]

Re: Performance Bond (DRP) No.: [____] (the “Bond”)

Design-Builder: [_____] (the “Design-Builder”)

Obligee: Capital Beltway Express, LLC (the “Obligee”)

Contract: The Design-Build Contract, dated [_____] between the Design-Builder and the Obligee for [●] (the “Contract”)

Dear Sir/Madam:

Pursuant to the Bond, the Obligee hereby certifies that:

1. the Design-Builder is and continues to be in Design-Builder Default (as defined in the Bond) under the Contract;
2. the Obligee has issued a notice of default to the Design-Builder in accordance with the provisions of the Contract; [and]
3. the Obligee has honored and will continue to honor and perform in all material respects its obligations under the Contract[; and]
4. [the Obligee is an Additional Obligee and is entitled to enforce the Bond pursuant to the Multiple Obligee Rider, dated [●], referencing Bond (No. [●]), attached to the Bond].

We hereby demand that the Surety honor its obligations under the Bond forthwith.

The Obligee acknowledges that if the Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP (as defined in the Bond) set forth in Schedule B to the Bond.

Yours truly,

Obligee

By: _____

Name:

Title:

SCHEDULE B
DISPUTE RESOLUTION PROCESS

Given the “on-default” nature of the Bond, the Design-Builder, the Surety and the Obligee acknowledge that they may not agree whether the Surety is liable to perform or make payment pursuant to the Bond. In order to ensure that such disputes are determined quickly so as to allow for the orderly and timely completion of the Contract, the Design-Builder, the Surety and the Obligee agree to submit such disputes to the dispute resolution process set out below. Terms not defined herein shall have the meaning ascribed to them in the body of the Bond. The parties acknowledge that any decision rendered in the dispute resolution process (an “Award”) will be binding, but subject to appeal *de novo* by any party at any time to a court of competent jurisdiction.

1. “Dispute” means a disagreement as to the Surety’s liability pursuant to the Bond following an Obligee’s Demand.
2. Disputes arising out of or in connection with the Bond shall be submitted for binding resolution to adjudication (the “Adjudication”) administered by JAMS – The Resolution Experts (“JAMS”) in accordance with the procedure set out below. The JAMS’ Dispute Resolution Rules for Surety Bond Disputes, effective as of the Bond date, shall apply to the resolution of any Dispute unless modified by the provisions herein, in which case, the provisions of this Bond shall govern.
3. The Surety or the Obligee shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon the Design-Builder and the Obligee, utilizing the electronic forms and filing directions provided by JAMS on its website at www.jamsadr.com. The Adjudication statement shall set forth in detail the factual and legal issues submitted for Adjudication and shall be sent no later than 10 days following the Obligee’s Demand.
4. Within five (5) business days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (the “Adjudicator”) from the JAMS Global Engineering & Construction Group (“JAMS GEC Group”). JAMS shall appoint an Adjudicator administratively from the JAMS GEC Group if the parties fail to appoint an Adjudicator within the five (5)-business day period. The Adjudicator shall be under a duty to act impartially and fairly and shall serve as an independent neutral.
5. The Adjudication shall commence on the date that JAMS receives the Adjudication statement and initial deposit of funds, and confirms the appointment of the Adjudicator (the “Adjudication Commencement Date”). Unless the Adjudicator decides otherwise, the Design-Builder, the Surety and the Obligee shall pay the final fees and expenses of Adjudication in accordance with the provisions set forth in the Contract governing the payment of fees and expenses of dispute resolution. In an Adjudication in which the Adjudicator determines that the Design-Builder and Surety are aligned with the same commonality of interest against the Obligee, the Design-Builder and Surety jointly shall be charged with one share and the Obligee will be charged with one share. Should any party fail to deposit funds as required by JAMS, any other party may advance the deposit, and the amount of that advance deposit will be taken into consideration in the Adjudicator’s decision.

6. Upon commencement of the Adjudication, the Adjudicator is empowered to take the initiative in ascertaining the facts and the law, and to exercise sole discretion in managing the Adjudication process. Among other things, the Adjudicator may require the parties to make additional factual submissions such as sworn witness statements and business documents, may interview important witnesses after notice to the parties and affording opportunity to attend, may request and consider expert reports and may call for memoranda on legal issues. Notwithstanding the foregoing, the Adjudicator must decide the following questions:
 - a. Is the Design-Builder in Design-Builder Default under the Contract?
 - b. Is the Surety liable to perform in accordance with Paragraph 4 and/or 5 of the Bond?
7. The Adjudicator shall issue a written decision (the “Decision”) which shall be binding upon and enforceable by the parties through the completion of the Design-Builder’s obligations under the Contract, subject to any party’s right to commence an appeal *de novo* in a court of competent jurisdiction at any time in accordance with the terms of the Bond. Any payment required in the Decision shall be made immediately. The Decision shall be issued through JAMS as soon as practicable but in no event later than thirty (30) calendar days of the Adjudication Commencement Date or within any later time agreed upon by the parties. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings between the parties.
8. Any party may request clarification of the Decision within five (5) business days after issuance, and the Adjudicator shall endeavor to respond within an additional five (5) business days, and, subject to any party’s right to commence an appeal *de novo* in a court of competent jurisdiction at any time in accordance with the terms of the Bond, any payment shall be made immediately thereafter. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings between the parties. The parties shall comply with the Decision, unless and until subsequently vacated or modified, through the completion of the Design-Builder’s obligations under the Contract.
9. Upon any settlement by the parties of the Dispute prior to issuance of a Decision, the parties shall jointly terminate the Adjudication. Such removal or termination shall not affect the parties’ continuing joint and several obligations for payment to JAMS of unpaid fees and expenses.

If the Decision is that the Surety is liable to perform in accordance with Paragraphs 4 and 5 of the Bond, then notwithstanding the commencement of any appeal *de novo* of the Decision, the Surety shall perform in accordance with the Decision and with the terms of the Bond until the Design-Builder’s obligations under the Contract are completed, but not to exceed the penal sum of the Bond.

EXHIBIT []
FORM OF MULTIPLE OBLIGEE RIDER
(Performance Bond (DRP))

MULTIPLE OBLIGEE RIDER
(PERFORMANCE BOND (DRP))

This Multiple Obligee Rider (this “Rider”) is executed concurrently with and shall be attached to and form a part of Performance Bond (DRP) No. [●] (hereinafter referred to as the “Performance Bond”).

WHEREAS, [●], a [●] (hereinafter called the “Design-Builder”) entered into a written agreement bearing the date of [●], 20[●] (hereinafter called the “Contract”) with CAPITAL BELTWAY EXPRESS, LLC (hereinafter called the “Primary Obligee”) for the performance of design and construction work for Project NEXT; and

WHEREAS, the Primary Obligee requires under the Contract that Design-Builder provide a performance bond and that both (i) the Commonwealth of Virginia Department of Transportation, a state agency of the Commonwealth of Virginia (“VDOT”) and (ii) [●], the “Collateral Agent”, and collectively with VDOT, the “Additional Obligees”) be named as additional obligee(s) under the performance bond; and

WHEREAS, Design-Builder and [●], a [●] duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia (the “Surety”) [and [●], and collectively, the “Co-Sureties”) have agreed to execute and deliver this Rider concurrently with the issuance of the Performance Bond, upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

1. The Additional Obligees are hereby added to the Performance Bond as named obligee(s).
2. The aggregate liability of the Surety (or Co-Sureties) under the Performance Bond to any or all of the Primary Obligee and the Additional Obligees, as their respective interests may appear, is limited to the penal sum of the Performance Bond, the Additional Obligees’ rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.
3. The Surety shall not be liable under the Bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) strictly in accordance with the terms of said Contract as to payments and

shall perform all other obligations to be performed under said Contract at the time and in the manner set forth, as said Contract may be amended or modified from time to time.

4. The Surety may, at its option, make any payments under the Bond by check issued jointly to all of the obliges and delivered to VDOT at [address/wire instructions TBD].

5. An Additional Obligee may enforce the Performance Bond if such Additional Obligee has provided to the Surety written certification that such Additional Obligee has the right to enforce the Performance Bind under its direct agreement(s) between or among the Primary Obligee and Additional Obligees.

The Design-Builder and the Surety (and Co-Sureties) have caused these presents to be duly signed and sealed this _____ day of _____, 20__.

DESIGN-BUILDER (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: Date of this Rider must be the same as the date of the Bond.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]