

**EXHIBIT Q-2**

**FORMS OF FRED EX PAYMENT AND PERFORMANCE BONDS**

## FORM OF FRED EX PAYMENT BOND

Bond No.

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 "VDOT"), has awarded to 95 EXPRESS LANES LLC (the "Obligee" which term hereinafter includes its successors and assigns) a Comprehensive Agreement dated July 31, 2012 (the "Original Agreement") to develop, design, build, finance, operate, and maintain the Interstate 95 HOV/HOT Lanes Project (the "Project"); and

WHEREAS, VDOT and the Obligee entered into a First Amendment to the Original Agreement dated May 2, 2016 (the "First Amendment"), under which the parties agreed to add the "Southern Terminus Extension" to the Project; and

WHEREAS, the Owner and Obligee have entered into an Amended and Restated version of the Original Agreement (the "ARCA") dated June 8, 2017 under which Obligee will add approximately eight miles of high-occupancy toll lanes on Interstate 395 to the Project, will widen portions of Interstate 395, and will perform other significant related improvements on and around Interstate 395 (collectively, the "395 Project"); and

WHEREAS, VDOT and the Obligee intend to enter into a further amended ARCA ("Second ARCA") under which the Obligee will add approximately ten miles of high-occupancy toll lanes to the existing 95/395 HOV/HOT Lanes on Interstate 95 to the Project south of their current terminus (the "Fred Ex Project"); and

WHEREAS, Obligee intend to has entered into the Fred Ex 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 "Fred Ex 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 Obligees 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 Obligees 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 Obligees' or VDOT's priority to use the funds for the completion of the Contract work.
10. The Surety shall not be liable to the Obligees, Claimants, or others for obligations of the Principal that are unrelated to the Contract. Neither the Obligees 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 Obligees, 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 Obligees 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 Fred Ex 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 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.]

## FORM OF PERFORMANCE BOND

Bond No.

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 95 EXPRESS LANES LLC ("Concessionaire" which term hereinafter includes its successors and assigns) a Comprehensive Agreement dated July 31, 2012 (the "Original Agreement") to develop, design, build, finance, operate, and maintain the Interstate 95 HOV/HOT Lanes Project (the "Project"); and

WHEREAS, the Owner and Concessionaire entered into a First Amendment to the Original Agreement dated May 2, 2016 (the "First Amendment"), under which the parties agreed to add the "Southern Terminus Extension" to the Project; and

WHEREAS, the Owner and Concessionaire have entered into an Amended and Restated version of the Original Agreement (the "ARCA") dated June 8, 2017 under which Concessionaire will add approximately eight miles of high-occupancy toll lanes on Interstate 395 to the Project, will widen portions of Interstate 395, and will perform other significant related improvements on and around Interstate 395 (collectively, the "395 Project"); and

WHEREAS, Owner and Concessionaire intend to enter into a further amended ARCA ("Second ARCA") under which the Concessionaire will add approximately ten miles of high-occupancy toll lanes to the existing 95/395 HOV/HOT Lanes on Interstate 95 to the Project south of their current terminus (the "Fred Ex Project"); and

WHEREAS, Concessionaire has entered into the Fred Ex Design-Build Contract (the "Contract") with [●], as Design-Builder (hereinafter, the "Principal"), bearing the date of [●], for the performance of certain work defined within the Contract as the "Fred Ex 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, 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 (i) the Owner, (ii) Concessionaire and (iii) the Fred Ex Financing Parties, ((i), (ii) and (iii) collectively referred to hereinafter as the "Obligees" and each, an "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 one or more of the Obligees, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents. An Obligee enforcing, or attempting to enforce, its rights under this Bond is referred to herein as the "Enforcing Obligee". [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 each Obligee, their directors, officers, employees and agents, as therein stipulated, and if the Principal shall reimburse upon demand of each Obligee any sums paid the Principal which exceed the final payment determined to be due upon completion of the Fred Ex 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 Fred Ex 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 Fred Ex 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 Enforcing Obligee to be, in default under the Contract, Surety shall promptly:

- (a) with the consent of the Enforcing Obligee, arrange for the Principal to perform and complete the Contract; or
- (b) complete the Fred Ex 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 Enforcing Obligee for a contract for performance and completion of the Fred Ex Work, through a procurement process approved by the Enforcing Obligee, arrange for a contract to be prepared for execution by the Enforcing Obligee and the contractor selected with the Enforcing 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 Enforcing Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Fred Ex Contract Price 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 and 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 Enforcing Oblige, Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Enforcing Oblige to Surety demanding that Surety perform its obligations under this Bond, and the Enforcing Oblige shall be entitled to enforce any remedy available to it.

6. After the Enforcing Oblige has terminated the Principal's right to complete the Fred Ex Work, and if Surety elects to act under Subparagraph 4.a., 4.b. or 4.c above, then the responsibilities of Surety to the Obliges shall not be greater than those of the Principal under the Contract, and the responsibilities of the Enforcing Oblige 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 Fred Ex Contract Price to mitigate costs and damages on the Contract, Surety is obligated without duplication for:

- (a) the responsibilities of the Principal for correction of defective work and completion of the Fred Ex Work;
- (b) actual damages, including 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. In no event shall the aggregate liability of the Surety to the Obliges, either jointly or severally, exceed the penal sum of the attached bond.

8. 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.

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

10. No right of action shall accrue on this Bond to or for the use of any entity other than the Obliges or their successors and assigns.

11. Concessionaire, the Fred Ex Financing Parties, and Owner may act as the Enforcing Oblige according to the following principles:

- (a) Concessionaire may enforce the provisions of this Bond at any time in accordance with Paragraph 4;
- (b) the Fred Ex Financing Parties may enforce the provisions of this Bond in accordance with Paragraph 4 if the Collateral Agent has elected to exercise its step-in or substitution rights under the Fred Ex Direct Agreement;
- (c) Owner may enforce the provisions of this Bond in accordance with Paragraph 4 if the Principal is in default under the Contract and Concessionaire refuses, ignores, or is otherwise unable to enforce the provisions of this Bond (but only to the extent the Fred Ex Financing Parties are not already acting as the Enforcing Obligees); and
- (d) there will be only one Enforcing Obligees at a time and Surety shall follow, and may rely upon, the instructions of the Enforcing Obligees.

12. [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 Obligees will have no obligation to deal with multiple sureties hereunder. All correspondence from an Obligees 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 Obligees designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be [●], whose contact information is [●].

13. 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.

14. 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.]