

EXHIBIT F-1
(I) FORM OF DESIGN-BUILD LETTER OF CREDIT

IRREVOCABLE STANDBY DESIGN-BUILD LETTER OF CREDIT

ISSUER	[•] <i>[Name and address of banking institution with offices in the City of New York, New York or the City of Richmond, Virginia]</i>
PLACE FOR PRESENTATION OF DRAFT	<i>[Name and Address of Bank/Branch—Must be in the City of New York, New York or the City of Richmond, Virginia unless otherwise approved by the Department]</i>
APPLICANT	[•]
BENEFICIARY	VIRGINIA DEPARTMENT OF TRANSPORTATION 1401 EAST BROAD STREET RICHMOND, VA 23219 ATTN: [•] along with [•] AS COLLATERAL AGENT [•] ATTN: [•]
LETTER OF CREDIT NUMBER	[•]
PLACE AND DATE OF ISSUE	[•]
AMOUNT	One Hundred Million U.S. Dollars (\$100,000,000) <i>[The amount of a single Design-Build letter of credit may be less on the condition that the Developer submits more than one Design-Build letter of credit and the sum of such Design-Build letters of credit together is \$100,000,000.]</i>
EXPIRATION DATE	[•]

Issuer hereby issues this Irrevocable Standby Design-Build Letter of Credit (this “Letter of Credit”) in favor of Beneficiary in the amount of [One Hundred Million] United States Dollars (US \$[100,000,000]) (such amount, the “Stated Amount”). Funds under this Letter of Credit are available to Beneficiary upon Beneficiary’s presentation to Issuer of one or more sight drafts drawn on Issuer for a sum or sums in an aggregate amount not exceeding the Stated Amount. Any sight draft under this Letter of Credit will identify this Letter of Credit by the name of Issuer and the Letter of Credit number, amount, and place and date of issue. Such sight draft will be signed by *[an officer of Beneficiary]* or his designee and will contain a statement that Beneficiary is entitled to make such draw or will be accompanied by a signed statement of *[an officer of*

Beneficiary] to the same effect. Partial drawings and multiple drawings under this Letter of Credit are permitted.

This Letter of Credit will be honored by Issuer if the above-described site draft is presented to [•] at [NEW YORK, NEW YORK or RICHMOND, VIRGINIA Bank/Branch—Name & Address] on or before [•] (the “Expiration Date”). If a drawing in compliance with the terms and conditions of this Letter of Credit is presented at or prior to [•], Eastern time, on any Banking Day, Issuer will honor the drawing within three Business Days. Drawings under this Letter of Credit may be made between 9:00 AM and 5:00 PM, Eastern time, on any Banking Day. As used herein “Banking Day” means any day that is not a Saturday or Sunday or any other day on which commercial banks in [•] are authorized by law or executive order to close.

The obligations of Issuer hereunder are primary obligations to Beneficiary and will not be affected by the performance or non-performance by [Name of Applicant] under any agreement with Beneficiary or by any bankruptcy, insolvency or other similar proceeding initiated by or against [Name of Applicant]. [Name of Applicant] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. Issuer will pay to Beneficiary any amount drawn hereunder in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party. This Letter of Credit will terminate on the earlier of (i) the close of business on the Expiration Date and (ii) the date on which Issuer has honored one or more draws in the full amount of the Stated Amount. This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [•] are acceptable and will be honored by Issuer (each such drawing, a “Fax Drawing”), provided, however, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer’s receipt of such Fax Drawing by calling Issuer at telephone number [•]. Within the same Banking Day of Issuer’s receipt of a Fax Drawing, Issuer will acknowledge Beneficiary’s presentment by sending a confirmation electronic mail to the electronic mail address provided by Beneficiary to Issuer within the Fax Drawing itself.

To the extent not inconsistent with the express provisions hereof, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 (“ISP98”), as interpreted under the laws of the Commonwealth of Virginia, and will, as to matters not governed by ISP98, be governed and construed in accordance with the laws of the Commonwealth of Virginia, without regard to conflict of laws principles.

With respect to any suit, action or proceedings relating to this Letter of Credit (“Proceedings”), Issuer irrevocably: (i) submits to the exclusive jurisdiction of the United States District Court for the Eastern District of Virginia and (ii) waives any objection which it may have at any time to and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over Issuer.

Any failure by Beneficiary to draw upon this Letter of Credit as permitted hereunder will not cause this Letter of Credit to be unavailable for any future drawing, provided that this Letter of

Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

[ISSUER]

By: _____
Name: _____

EXHIBIT F-1
(II) FORM OF PERFORMANCE BOND

FORM OF PERFORMANCE BOND

Bond No.

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Commonwealth of Virginia, acting by and through the Virginia Department of Transportation (“VDOT”), a state agency of the Commonwealth of Virginia (collectively the “Owner”), has awarded to [_____] (the “Obligee”, and collectively with the Owner, the “Obligees”) a Comprehensive Agreement (the “Agreement”) to develop, design, build, finance, operate and maintain the Transform 66 P3 Project (the “Project”) through a public-private partnership.

AND WHEREAS, the Obligee has entered into a Design-Build Contract (the “DB Contract”) with [_____] , as DB Contractor (hereinafter, the “Principal”), bearing the date of [_____] , for the performance of design and construction of the Project and certain other work for the Project defined in the DB Contract as the “Design-Build Work”, which the DB Contract and all items incorporated into the DB Contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the Design-Build Contract 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 Agreement and the Contract that these presents shall be executed.

AND WHEREAS, it is one of the conditions of the Contract that separate performance security shall be executed by the Principal with respect to the performance of the Contract for this Project (the “Other Performance Security”).

NOW THEREFORE, we, the undersigned Principal, and [_____] (the “Surety”[, and collectively, the “Co-Sureties”]) are firmly bound and held unto 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, we 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 Obligees, its directors, officers, employees and agents, as therein stipulated, and if the Principal shall reimburse upon demand of the Obligees any sums paid the Principal which exceed the final payment determined to be due upon completion of the Project, then these presents shall become null and void; otherwise they shall remain in full force and effect unconditionally, irrevocably and shall be non-cancellable; provided, however, that this Bond shall be released by the Obligees upon the achievement of the Project Completion Date for the Project (as defined in the Contract).

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

1. The Contract Documents are incorporated by reference 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 Design-Build Work under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for liquidated damages, noncompliance charges and other charges as specified in the Contract Documents, but not to exceed the Bonded Sum.
3. The guarantees contained herein shall survive Project Completion of the Work called for in the Contract Documents with respect to those obligations of Principal which survive such Project Completion.
4. The guarantees contained herein shall survive Project Completion of the Work called for in the Contract Documents with respect to those obligations of Principal which survive such Project Completion:
 - a) Without the consent of the Obligees, arrange for the Principal to perform and complete the Contract; or
 - b) complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or
 - c) obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Design-Build Work, through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees' 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 Obligees the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Contract Price incurred by the Obligees resulting from the Principal's default; or

- d) waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.
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 an Obligee, Surety shall be deemed to be in default on this Bond 15 Days after receipt of an additional written notice from the Obligees to Surety demanding that Surety perform its obligations under this Bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and an Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.
6. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligees under the Contract. To the limit of the Bonded Sum, 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 Principal for correction of defective work and completion of the Design-Build 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. No alteration, modification or supplement to the Contract Documents 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 Documents.
8. Correspondence or claims relating to this Bond should 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 Obligee

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 Obligees will have no obligation to deal with multiple sureties hereunder. All correspondence from the 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 [_____].
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 for 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 F-1
(III) FORM OF PAYMENT BOND**

FORM OF PAYMENT BOND

BOND NO. _____
AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that _____

of _____

hereinafter called the PRINCIPAL, and _____

_____ a corporation duly organized and

existing under and by virtue of the laws of the State of _____, hereinafter called the SURETY, and authorized to transact business within the Commonwealth of Virginia, as

SURETY, are held and firmly bound unto _____

as OBLIGEE, in the sum of: _____

_____ DOLLARS (\$ _____), lawful money of the United States of America, for payment of which, well and truly be made to the OBLIGEE, the PRINCIPAL and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION TO THE OBLIGEE IS SUCH THAT:

WHEREAS, the PRINCIPAL has executed and entered into a certain Design-Build Contract hereto attached, with the OBLIGEE, dated _____, 201_ for the performance of design and construction of the Project and certain other work for the Project defined in the Design-Build Contract as the "Design-Build Work" (the Design-Build Contract, and all items incorporated into the Design-Build Contract, together with any and all changes, extensions of time, alternations, modifications or additions to the Design-Build Contract or to the work to be performed thereunder, shall hereafter be referred to as the "Contract").

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in the Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment, and tools consumed or used in connection with the construction of the work, and all insurance premiums on the work, and for all labor performed in the work, whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to work to be performed thereunder, or the Specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work, or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the OBLIGEE and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROCEDURE FOR PAYMENT

1. 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 9).
 - 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 9).
2. If a notice of non-payment required by Section 1 is forwarded or otherwise provided by the Obligee or the Virginia Department of Transportation ("VDOT") to the Principal, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 1.
3. When a Claimant has satisfied the conditions of Sections 1(a) or (b), as 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.
4. The Surety's failure to discharge its obligations under Section 3(a) or Section 3(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 3(a) or Section 3(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.

5. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 4, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
6. 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.
7. 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.
8. 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 on which, under the Contract, the last labor or service was performed by the person bringing the action or the last materials or equipment were furnished by the person bringing the action.
9. Notice and Claims to the Surety, the Obligees, or the Principal shall be mailed or delivered to the following address:

[]

Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
10. 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.

11. Definitions

11.1 "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.

11.2 “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 Project is located.

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument

this ___ day of _____, 20___, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

PRINCIPAL

By _____(Seal)

Attest

SURETY

By _____(Seal)

Attest

APPROVED AS TO FORM: _____, 20__.

_____, OBLIGEE

NOTE: Date of bond must not be prior to date of Contract. If PRINCIPAL is a partnership, all partners should execute bond.

IMPORTANT: The SURETY named on this bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond.

EXHIBIT F-1
(IV) FORM OF EXPEDITED DISPUTE RESOLUTION PERFORMANCE BOND

FORM OF EXPEDITED DISPUTE RESOLUTION PERFORMANCE BOND

Bond No.

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Commonwealth of Virginia, acting by and through the Virginia Department of Transportation (“VDOT”), a state agency of the Commonwealth of Virginia (collectively the “Owner”), has awarded to [_____] (the “Obligee”) a Comprehensive Agreement (the “Agreement”) to develop, design, build, finance, operate and maintain the Transform 66 P3 Project (the “Project”) through a public-private partnership.

AND WHEREAS, the Obligee has entered into a Design-Build Contract (the “DB Contract”) with [_____] , as DB Contractor (hereinafter, the “Principal”), bearing the date of [_____] , for the performance of design and construction of the Project and certain other work for the Project defined in the DB Contract as the “Design-Build Work”, which the DB Contract and all items incorporated into the DB Contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the Design-Build Contract 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 Agreement and the Contract that these presents shall be executed.

AND WHEREAS, it is one of the conditions of the Contract that separate performance security shall be executed by the Principal with respect to the performance of the Contract for this Project (the “Other Performance Security”).

NOW THEREFORE, we, the undersigned Principal, and [_____] (the “Surety”[, and collectively, the “Co-Sureties”]) are firmly bound and held unto 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, we 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:

13. 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 which exceed the final payment determined to be due upon completion of the Project, then these presents shall become null and void; otherwise they shall remain in full force and effect unconditionally, irrevocably and shall be non-cancellable; provided, however, that this Bond shall be released by the Obligee upon the achievement of the Project Completion Date for the Project (as defined in the Contract).

14. The obligations covered by this Bond specifically include payments to subcontractors, payments to suppliers and liability for liquidated damages and warranties as specified in the Contract, but in no event shall the Surety's aggregate liability exceed the penal sum of this Bond.
15. The obligations covered by this Bond solely cover the design and construction work and the Design-Build Work to be performed under the Contract.
16. The Surety agrees that no fraud practiced by any person other than the Obligee(s) seeking to recover on this Bond, as well as no change, extension of time, alterations, additions, omissions or other modifications of the terms of the following shall in any way affect Surety's obligations on this Bond, and it does hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications to:
 - a) the Contract, or
 - b) in the Design-Build Work to be performed with respect to the Project, or
 - c) 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
 - d) any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Obligee(s) otherwise entitled to recover under this Bond.
17. Whenever the Principal shall be, and is declared by Obligee to be in default under the Contract, the Surety shall within fifteen (15) days of receipt of a letter from Obligee in the form set forth in Schedule A:
 - a) remedy such default, or
 - b) complete the Design-Build Work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or
 - c) select a contractor or contractors to complete all Design-Build Work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, using a contractor or contractors approved by the Obligee as required by the Contract (provided,

that the Surety may not select the Principal or any affiliate of the Principal to complete the Design-Build Work for and on behalf of the Surety without Obligee's express written consent), arrange for a contract meeting the requirements of the Contract between such contractor or contractors and Obligee, and make available as Design-Build Work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety is liable hereunder, the bonded sum; or

- d) waive the Surety's right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, make payment of the full penal sum of the bond to the Obligee.

The Surety's actions as stated in (a)-(d) above shall each include payment to the Obligee of any liquidated damages or other sums due and owing under the Contract by the Principal.

18. In the event that the Surety disputes its liability pursuant to this Bond, 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 the Surety fails to make an election within the fifteen (15) days set forth in Paragraph 5 of this Bond, then the claim shall be deemed to be in dispute for the purposes of this paragraph. 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, the Principal and the Obligee as to their respective rights and obligation 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 (which in the case of making payments owed per the Decision shall mean making such payments immediately) and shall continue to comply with the Decision and the terms of the bond until the Project Completion Date under the Contract notwithstanding the commencement 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 the Bond.
19. The parties acknowledge that the Obligation to Comply with the Decision is of the essence of the Bond, and the parties agree that the Surety's failure to fulfill its Obligation to Comply with the Decision will cause irreparable harm to the Principal and the Obligee. 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 either party's right to pursue a de novo appeal of the Decision in a court of competent jurisdiction.

20. [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 the 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 [_____].
21. 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.
22. 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.
23. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and for any de novo appeal of the Decision or any action seeking enforcement of the Decision the parties consent to jurisdiction 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.]

**Schedule A
Form of Demand**

Date

Re: Performance Bond No.: [] (the "Bond")

Principal: [] (the "Principal")

Obligees: The Owner and [X] (each, an "Obligee" and collectively, the "Obligees")

Contract: The Design-Build Contract, dated [] between the Principal as DB Contractor and [X] as Concessionaire for the Transform 66 P3 Project (the "Contract")

Dear Sir:

Pursuant to the Bond, the Obligees hereby certify that:

1. the Principal is and continues to be in default of the Principal's obligations under the Contract;
2. [X] has issued a notice of default to the Principal in accordance with the provisions of the Contract; and
3. [X] has honored and will continue to honor and perform in all material respects its obligations under the Contract.

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

The Obligees acknowledge that if the Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP set forth in Schedule B.

Yours truly,

Obligee

[]

By: _____

Name:

Title:

Owner

By: _____

Name:

Title:

Schedule B

Dispute Resolution Process

Given the on default nature of the Bond, the Principal, the Surety and the Obligees acknowledge that they may not agree whether the Surety is liable to 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 Principal, the Surety and the Obligees 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 [_____] 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 Obligees shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon the Principal 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 either Obligee’s Demand.
4. Within three (3) Business Days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (the “Adjudicator”) who shall be a panelist on the JAMS Global Engineering & Construction Panel (“JAMS GEC Panel”) of dispute adjudicators. JAMS shall appoint an Adjudicator administratively from the JAMS GEC Panel if the parties fail to appoint an Adjudicator within the three 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 Principal, the Surety and [X] as 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 Principal and Surety are aligned with the same commonality of interest against the Obligees, the Principal and Surety jointly shall be charged with one

share and the Obligees 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 Principal in default of the Principal's obligations under the Contract?
 - b. Is the Surety liable to perform in accordance with Paragraph 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 Principal'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. This 30 calendar day period also may be extended by the Adjudicator in its sole discretion up to 14 days in the event that JAMS has requested any party to make an additional fee and expense deposit and such funds have not been deposited as requested or advanced by another party.
9. 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 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 Principal's obligations under the Contract.
10. 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 Paragraph 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 Principal's Obligations under the Contract are completed, but not to exceed the penal sum of the Bond.

