

FORM OF PAYMENT BOND

BOND NO. _____

BOND AMOUNT: \$[●]

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Virginia Passenger Rail Authority (“Owner”) has awarded to [●], a [●] duly organized and existing under the laws of the State of [●] (“Contractor”) a contract (“Contract”) for the [●] Project (“Project”) dated [●]; and

WHEREAS, one of the conditions of the Contract is that Contractor provide this duly executed instrument (“Bond”).

NOW THEREFORE, We, the undersigned Contractor and [●], a corporation 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 (“Surety”), are held and firmly bound, jointly and severally, unto Owner, as obligee, and its successors and assigns, in the sum of [●], lawful money of the United States of America, for the payment of which, well and truly be made to Owner and Claimants, Contractor and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Contractor shall: (a) make payments of all sums due to all persons and entities having a direct contract with Contractor, or a direct contract with a subcontractor having a direct contract with Contractor, for supplying labor, material, and/or supplies used directly or indirectly by Contractor in the prosecution of the Work provided in the Contract (such persons and entities hereinafter referred to collectively as “Claimants”); and (b) shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of Contractor’s failure to fulfill its obligations to Claimants under clause (a) above, including but not limited to, fully reimbursing and repaying Owner reasonable counsel fees incurred as a result of any action arising out of or in connection with any such failure, then Surety’s obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. All Claimants shall have a direct right of action only against Surety and Contractor under this Bond; *provided, however*, that no claim, suit or action shall be brought by any Claimant after the expiration of one (1) year following the date on which

Claimant last performed labor or last furnished or supplied materials to the Project. Any suit or action must be brought in a state or federal court of competent jurisdiction located in the Commonwealth of Virginia.

4. Any Claimant who does not have a direct contractual relationship with Contractor shall, as a condition precedent to bringing such claim, suit or action, provide written notice thereof to Contractor, Surety, and Owner, no later than ninety (90) days from the date Claimant last supplied labor or materials, stating with substantial accuracy the amount claimed, the name of the person for whom the work was performed or to whom the material was furnished, and the dates on which such labor or materials were supplied.

5. Surety shall, after receipt of reasonable notice to Surety of any claim, demand, suit or action brought against Owner by a Claimant, defend, with counsel approved by Owner, indemnify and hold harmless Owner from any and all claims, demands, suits or actions brought by any Claimant. Owner shall have a direct right of action against Surety and Contractor for any breach by Surety of its obligation to defend, indemnify and hold harmless Owner.

6. 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 Work to be performed with respect to the Project, 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 Contractor of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Claimants otherwise entitled to recover under 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.

7. Surety acknowledges that the amounts owed to Contractor under the Contract shall first be available for the performance of the Contract, including Owner's superior right to use the funds due for the completion of the Work, and then may be available to satisfy claims arising under this Bond. Owner shall not be liable for the payment of any costs or expenses or claims of any Claimant under this Bond and shall have no obligation to make payments to, or give notice on behalf of, any Claimant.

8. Any provision in this Bond which conflicts with applicable laws, regulations and ordinances shall be deemed modified to conform to applicable laws, regulations and ordinances.

9. Contractor or Owner shall furnish a copy of this Bond or permit a copy to be made upon request by any person or entity who may be a Claimant as defined above.

10. ***[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 Owner and Claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner and Claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated Lead Surety and service of such correspondence or notice upon the Lead Surety shall constitute service 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 Owner designating a single new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be [●].

11. 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.

[Signature Page Follows]

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

CONTRACTOR (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.]